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NO. 80-2035

IN THE

Supreme Court of the United States

October Term, 1980

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,
Petitioner,

v.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVERNMENT OF IRAN, DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES OF AMERICA,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT BEFORE JUDGMENT

Thomas W. Luce, III
Counsel of Record
M. David Bryant, Jr.
Eugene Zemp DuBose
HUGHES & HILL
1000 Mercantile Dallas Building
Dallas, Texas 75201
(214) 651-0477
Attorneys for Petitioner Electronic Data Systems Corporation Iran

OF COUNSEL:
Monroe Leigh
Michael Sandler
STEPTOE & JOHNSON
1250 Connecticut Ave., N.W.
Washington, D. C. 20036
(202) 862-2000

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OPINIONS, ORDERS, JUDGMENTS, AND OTHER PROCEEDINGS BELOW

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELECTRONIC DATA SYSTEMS CORPORATION IRAN

vs.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, ET. AL.

No. CA3-79-0218-F

MEMORANDUM OPINION

On January 23rd, 1981, Plaintiff in the above-entitled action, Electronic Data Systems Corporation Iran (hereinafter "EDS"), filed its application for a preliminary injunction in aid of judgment. EDS seeks an order of this Court restraining the Defendant Secretary of the Treasury of the United States and the United States (hereinafter "federal Defendants") from taking any action to nullify, interfere with, or abrogate the Final Judgment, Orders, or jurisdiction of this Court herein, the attachment of property of Defendant The Government of Iran by EDS, or EDS' right to enforce its legal rights in the United States courts." The Court set the action for a hearing to take place on February 3rd, 1981. On January 30th, 1981, the Court denied the motion of the Secretary and the United States for a continuance, or in the alternative a stay. On February 3rd, 1981, the Court heard evidence and oral argument from counsel representing the federal Defendants and EDS. At the conclusion of oral argument the Court directed the federal Defendants to submit briefing on their position in opposition to EDS's application for a preliminary

injunction no later than 5:00 p.m., February 6th, 1981. In addition the Court determined not to adjourn the hearing, but instead to leave the record open in the event that further evidence or oral argument was necessary. The federal Defendants have submitted the briefing ordered by the Court, and the Court is of the opinion that further evidence or oral argument is unnecessary to the disposition of EDS's application. Therefore, the Court rules as follows:

A. The Evidentiary Record and Preliminary Findings of Fact

The evidence before the Court derives from three sources. The first source is the "Stipulations of Fact for Purposes of Hearing on Application for Preliminary Injunction In Aid of Judgment (hereinafter "Stipulations of Fact"). The second source, Defendant's Exhibit Two, is a stipulation entered into between Marine Midland Bank and EDS on January 28, 1981, in Cause No. 79-1711 pending in the United States District Court for the Southern District of New York. The third source of evidence bearing on Plaintiff's application for a preliminary injunction is the affidavit of Thomas W. Luce, III, counsel for EDS (hereinafter "Luce affidavit"). None of the Defendants in this action have objected to the Luce affidavit, or any part therein. Accordingly, the Court makes the following preliminary Findings of Fact and Conclusions of Law with respect to Plaintiff's application for a preliminary injunction in aid of judgment based upon the above discussed evidentiary submissions and the arguments and pleadings of counsel for all parties. Said Findings of Fact and Conclusions of Law are made only for purposes of a determination as to Plaintiff's application for a preliminary judgment and do not represent final Findings of Fact and Conclusions of Law with respect to this proceeding.

B. Preliminary Findings of Fact

1. Defendant Donald T. Regan is the Secretary of the Treasury of the United States and is sued in his official capacity and not personally.

2. EDS filed this action, pursuant to the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1602 et seq., against Defendants The Social Security Organization of the Government of Iran, The Ministry of Health and Welfare of the Government of Iran, and The Government of Iran (hereinafter collectively referred to as the "Iranian Defendants") on February 23, 1979.

3. This action was originally scheduled by this Court for trial on August 20, 1979, but at the Iranian Defendants' instance, the trial date was continued.

4. This action was tried to the Court without a jury from January 14, 1980, through January 28, 1980. The Iranian Defendants were represented at trial by able and competent Dallas counsel and brought witnesses from Iran to testify on their behalf.

5. On May 2, 1980, this Court entered its Findings of Fact and Conclusions of Law with respect to such action and based thereon the Court on May 9, 1980, entered its Final Judgment in favor of EDS and against the Iranian Defendants in the sum of $19,069,530.00, plus post-judgment interest and costs, and granted to EDS declaratory relief pursuant to 28 U.S.C. § 2201.

6. The Iranian Defendants' Motions for Stay of Enforcement of said Final Judgment were denied by the United States District Court for the Northern District of Texas on June 18, 1980, and by the United States Court of Appeals for the Fifth Circuit on July 7, 1980, and no supersedeas

bond or stay of enforcement is in effect with respect to said Final Judgment.

7. Said Final Judgment is now effective and enforceable.

8. The Iranian Defendants have appealed from this Court's award to EDS of monetary relief to the United States Court of Appeals for the Fifth Circuit, No. 80-1641; no date for oral argument for said appeal has been set.

9. Said Final Judgment is wholly unsatisfied in a sum now exceeding $20 million.

10. On April 2, 1979, after EDS had learned of apparent attempts to conceal from it certain assets of Defendant The Government of Iran, EDS filed an action against the Iranian Defendants in the United States District Court for the Southern District of New York. EDS requested therein a pre-judgment attachment of certain funds at Marine Midland Bank in New York, New York, to secure satisfaction of the judgment then being sought by EDS against said Defendants.

11. On June 13, 1979, the order of the United States District Court for the Southern District of New York was entered granting EDS' application and directing that funds being held by Marine Midland Bank be levied upon and taken into custody of the United States Marshal for the Southern District of New York.

12. Pursuant to that Order, the Marshal, on July 3, 1979, took such funds into his custody and, as required by the Order, then deposited them in a thirty-day time account at Marine Midland Bank in his own name as custodian for the Court. As of the date of this hearing, these funds remained in such account.

13. On November 14, 1979, the President of the United States in Executive Order 12170 declared a national emergency as a result, inter alia, of the seizure of the United States Embassy and American diplomatic and other personnel in Iran on November 4, 1979. Said Executive Order resulted in the blocking of certain property of The Government of Iran subject to the jurisdiction of the United States. No previous national emergency had been declared in 1978 or 1979 as a result of or in connection with any events in Iran.

14. On November 15, 1979, the Acting Assistant Attorney General of the United States transmitted a letter to the Clerk of the United States Court of Appeals for the Second Circuit. In said letter, the United States stated that Executive Order 12170, and its implementing regulations, did not affect the validity of EDS' preexisting attachment, or nullify or void the same.

15. The Order of Attachment was then on appeal to the United States Court of Appeals for the Second Circuit. That Court on November 28, 1979, remanded the matter to the United States District Court for the Southern District of New York, *Electronic Data Systems Corporation Iran v. Social Security Organization of the Government of Iran*, 610 F.2d 94 (2d Cir. 1979), and that Order remains in full force and effect.

16. On January 19, 1981, the United States and Iran entered into certain understandings expressed in two declarations relative to the hostages and to certain Iranian assets.

17. The text of the basic document, the Declaration of the Government of the Democratic and Popular Republic of Algeria (the "Declaration"), is set forth in Exhibit C of the Luce affidavit and Exhibit E of the Stipulations of Fact.

18. The text of a separate declaration, entitled Declaration of the Government of the Democratic and Popular Government of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (the "Claims Declaration") is set forth in Exhibit C of the Luce affidavit and Exhibit E of the Stipulations of Fact.

19. On January 19, 1981, Jimmy Carter, while President of the United States, signed Executive Orders 12277 through 12281 (the "Executive Orders"). Under the Declaration, the action provided for in said Executive Orders was not to take effect until certification by the Government of Algeria that the 52 United States hostages had safely departed from Iran. Said event did not occur during the Presidency of Jimmy Carter. On January 20, 1981, Ronald Regan assumed the office of President of the United States of America, and shortly thereafter at approximately 12:35 p.m., Eastern Standard Time, American diplomatic and other personnel were released from captivity in Iran. The Executive Orders were first filed at the office of the Federal Register on January 22, 1981, and first published in the Federal Register on January 23, 1981. The Executive Orders have never been signed by Ronald Reagan, President of the United States.

20. Executive Order 12279, dated January 19, 1981, is the sole Executive Order dealing with attachments of Iranian funds held by domestic banks, and, by its terms, is effective immediately. The text of Executive Order 12279 is set forth in Exhibit E to the Luce affidavit and Exhibit F to the Stipulations of Fact.

21. On or about January 20, 1981, President Jimmy Carter directed the Federal Reserve Bank of New York to transfer from the United States approximately $2.5 billion in funds which then were subject to attachments and other

orders of United States courts prohibiting any such transfer. No prior notice of such action was given to any such court. Pursuant to the direction of the President, the Federal Reserve Bank of New York carried out the transfer. On January 21, 1981, the United States filed a Statement of Interest, in the action brought by EDS against the Iranian Defendants in the United States District Court for the Southern District of New York. In this Statement of Interest, representatives of the Executive Branch asserted the legality of such action despite the admitted failure to notify such courts or seek vacation of applicable attachments or other court orders. The Statement of Interest stated that the declarations would require further implementation through Treasury regulations and further Executive Orders and that the Declarations and such implementing actions would substantially affect attachments of Iranian assets and claims against the Government of Iran. The Government requested that the Court stay proceedings therein to allow, *inter alia*, all further actions necessary for implementation of the Declarations and stated that, on or prior to February 25, the Government would file a statement describing, *inter alia*, the Executive Branch actions and implementing regulations.

22. Under the understandings of the United States as reflected in the Declarations, it was recognized that transfers, even of funds subject to such understandings (other than those already transferred prior to the release of the hostages), were not required to take place for more than six months after the date of such understandings.

23. Counsel for EDS in the New York action and counsel for Marine Midland Bank have entered into a Stipulation providing, *inter alia*, that Marine Midland Bank will not transfer the funds deposited by the United States Marshal,

as custodian for the United States District Court for the Southern District of New York, without reasonable notice to EDS.

24. Immediate and irreparable injury, loss or damage will result to EDS from any implementing actions affecting the jurisdiction of this Court, the judgment entered by this Court, EDS' constitutional rights, the attachment secured in the United States District Court for the Southern District of New York and the funds relating thereto, and from the transfer by Marine Midland Bank in purported compliance with Executive Order 12279, issued January 22, 1981, of funds in custody of the United States Marshal for the Southern District of New York, deposited by said Marshal with said bank pursuant to the Order of Attachment, or by other action by Marine Midland Bank affecting the status of such funds.

C. Standard of Review

It is well established in the Fifth Circuit that a preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant has clearly carried the burden of showing that the requisite four criteria are met. *Canal Authority of State of Florida v. Calloway*, 489 F.2d 567 (5th Cir. 1974). The four factors that must be met before a court will grant a preliminary injunction are (1) irreparable harm to the plaintiff from failure to issue the injunction, (2) the relative lack of harm to the defendant from issuance of the injunction, (3) the public interest, and (4) the probability that the plaintiff will ultimately succeed on the merits. *Camenisch v. University of Texas*, 616 F.2d 127, 130 (5th Cir. 1980); *Canal Authority*, *supra* at 572. Moreover, the movant must clearly carry the burden of

persuasion before the drastic remedy will be granted. *Canal Authority, supra* at 573. It is also the settled law of this circuit that the grant or denial of a preliminary injunction rests in the discretion of the trial court. *Shamloo v. Mississippi State Board of Trustees of Institutions of Higher Learning*, 620 F.2d 516, 525 (5th Cir. 1980). The federal Defendants urge that *Adams v. Vance*, 570 F.2d 950, 954-55 (D. D.C. 1977), requires an extraordinarily strong showing by the plaintiff in this action, asserting that any injunctive relief would deeply intrude into the core concerns of the executive branch. In *Adams*, the injunctive relief at issue was a temporary restraining order in the nature of a mandatory injunction. The trial court had entered a temporary restraining order requiring the Secretary of State to file an objection with the International Whaling Convention prior to the expiration of the deadline for objecting. Noting that the order "commanded an unprecedented action irreversibly altering the delicate diplomatic balance in the environmental arena" and it directed "actions so potent with consequences so irretrievable" that the court treated the order as a mandatory injunction as opposed to a temporary restraining order for purposes of determining a right to appeal. The *Adams* court also stated that "when requested immediate injunctive relief deeply intrudes into the core concerns of the executive branch, a court is 'quite wrong in routinely applying to this case the traditional standards governing more orthodox stays' ". The case cited by the *Adams* court in support of the proposition is *Sampson v. Murray*, 415 U.S. 61 83-84 (1974). Having reviewed that case, the Court is of the opinion that it is simply inapplicable. The Court is also of the opinion that the Fifth Circuit jurisprudence with regard to the issuance of preliminary injunctions, noted above, sets forth the proper standards by which this Court should rule upon Plaintiff's application. The impact of an

injunction on the "core concerns of the executive branch" is adequately dealt with by factor number three, above, the public interest.

1. Irreparable Harm to the Plaintiff From Failure to Issue the Injunction.

EDS' fears of irreparable harm arise mainly out of the promulgation and publication of Executive Order 12279. Section 1-101 of that order states in pertinent part:

> 1.101. Any branch or office of a banking institution subject to the jurisdiction of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

Section 1-102(b) and (c) of Executive Order 12279 provide as follows:

> (b) All rights, powers and privileges relating to the properties described in § 101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. E.S.T., including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities,

whether acquired by court order or otherwise, or nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

The Secretary of the Treasury is delegated authority to carry out the terms of the Order (Section 1-105) and by its terms the order is effective immediately (Section 1-106). Further, Section 1-103 provides that compliance with the Order by any domestic bank is a discharge of any liability arising out of such compliance.

As recounted in the findings of fact above, EDS has secured a pre-judgment attachment on assets of the defendant Government of Iran, and funds sufficient for the execution of the judgment are held in the custody of the U.S. Marshal in Marine Midland Bank in New York. A final judgment has been entered in this action. Although judgment is currently on appeal before the Fifth Circuit of Appeals, the Defendant Government of Iran has not executed a supersedeas bond and there has been no stay of execution, EDS asserts that the executive order requires the Marine Midland Bank to transfer the assets held in the custody of the Marshal immediately to the New York Federal Reserve Bank. EDS further complains that should this transfer take place, there will remain no assets upon which this Court's judgment can be executed.

The Federal Defendants assert that a stipulation entered into between EDS and Marine Midland Bank in Cause

No. 79-1711 in the District Court for the Southern District of New York (Defendant's Exhibit 2) militates against a finding of irreparable harm. The stipulation provides that Marine Midland Bank "shall not transfer, or purport to transfer, such funds, or take any other action affecting the status of such funds, without prior reasonable notice to the Plaintiff, providing effective opportunity for Plaintiff to take appropriate action." If anything, this agreement merely illustrates the irreparable harm which EDS would suffer were Marine Midland Bank to comply with Executive Order 12279. Although the stipulation provides EDS some comfort, it simply does not eliminate the potential irreparable harm which EDS would suffer were the assets to be transferred. In short, Marine Midland Bank is not precluded from transferring the assets in compliance with the Executive Order.

The Federal Defendants also argue that the agreements entered into between the United States and the Government of Iran (but not Executive Order 12279) require further implementation through regulations of the Treasury Department as well as possible Executive Orders. In essence, the Federal Defendants ask this Court to speculate as to further Treasury Regulations or Executive Orders which may abate the harm of which EDS complains. Executive Order 12279 is by its own terms "effective immediately" and appears to be self-implementing. It is well established that Executive Orders issued pursuant to either statutory or constitutional authority are given the force and effect of law. *Legal Aid Society of Alameda County v. Brennan*, 381 F.Supp. 125, 130 (N.D. Cal. 1974). The stated objective of the Executive Order is clear. The Marine Midland Bank is compelled to transfer the assets which are the subject of this action to the Federal Reserve Bank of New York. The fact that the

new administration may issue subsequent Executive Orders or Treasury Regulations which abate the harm which EDS complains of is irrelevant.

The Federal Defendants have represented to this Court in a hearing on their motion for a continuance or stay that the United States will not subject any person or entity to civil or criminal proceedings for maintaining the status quo with regard to the assets in question through February 26, 1981. They argue that as a consequence, the issuance of a preliminary injunction is not necessary. In essence, what the United States has represented is that it will not enforce civil or criminal penalties against the Marine Midland Bank if it fails to comply with Executive Order 11279. Nevertheless, Marine Midland Bank is not prohibited from complying with Executive Order 11279. This argument simply bolsters the contention of EDS that Executive Order 11279 is self-implementing and effective immediately. The Federal Defendants similarly argue that the Executive Order does not set a date certain for compliance and also that the agreements between the United States and the Government of Iran do not require the ultimate transfer of the assets until within six months of the signing of the agreement. Once again, it is clear that the immediate transfer of the assets is not precluded. Finally, the Federal Defendants argue that the new administration has not yet had time to take a position with respect to the agreements and Executive Orders arising out of the hostage crisis. Implicit in this statement is the argument that irreparable harm which EDS is subject to as of this date might abate as a result of the subsequent position taken by the new administration. Once again, the Federal Defendants ask this Court to speculate as to future events which may or may not abate the harm to which EDS is currently subject. This the Court will not do.

In sum, I conclude that EDS will suffer immediate and direct irreparable harm should this Court decline to grant its application for a preliminary injunction. In support of my conclusion, I note that EDS has alleged a deprivation of due process of law as a consequence of Executive Order 11279. The Courts and authorities agree that "when an alleged deprivation of a constitutional right is involved, . . . no further showing of irreparable injury is necessary." 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 2948 at 440, and cases cited therein.

2. The Relative Lack of Harm to the Defendant from Issuance of the Injunction.

The Government has asserted two sources of injury which would result from the issuance of an injunction in the case at bar. First, they claim that an order enjoining the Secretary and the United States from enforcing Executive Order 12279 with respect to the funds held on deposit in Marine Midland Bank would be an undue interference with the implementation of sensitive foreign policy. Yet, the Government has also taken the position that it is awaiting the formulation of new policies by the new administration. Therefore, it is unclear that there is any "sensitive foreign policy" with which to interfere. When the new administration takes a position with respect to the agreements entered into between the United States and Iran and the Executive Orders issued pursuant to those agreements, it may move to have the limited injunctive relief prayed for by EDS vacated. A further consideration is the unique status of EDS vis-a-vis other creditors of and claimants against the Government of Iran. EDS perfected its pre-judgment attachment of the funds in the Marine Midland Bank prior to the implementation of the Iranian Assets Control Regulations on November 14, 1979. Finally, the agreements

between the United States and Iran do not call for the completion of the transfer of the assets enunciated in Section 1-101 of Executive Order 12279 until six months from January 19, 1981. I am ever mindful of and sympathetic to the President's need to carefully assess the Algerian accords in order to enable him to formulate the administration's ultimate position with regard to their implementation. Nonetheless, it is my view that a preliminary injunction will not impede such process nor occasion any real harm to the Government of the United States. On the other hand, if precipitous action did occur, the asserted harm to the Government of the United States would pall in comparison to the very real harm that EDS would suffer.

The Federal Defendants make the additional argument that the issuance of a preliminary injunction at this time would prevent the Secretary of the Treasury from issuing additional regulations pursuant to the delegation set forth in Executive Order 11279. This argument, of course, depends to some degree on the scope of the injunction. EDS seeks only to have the Secretary of the Treasury and Government of the United States enjoined from taking any action to implement the clearly stated objective of Executive Order 12279 solely with respect to EDS and the Marine Midland Bank. Once again, the harm asserted by the Government of the United States and the Secretary of the Treasury is speculative and not concrete. Therefore, I conclude that the relative harm to the United States of an injunction at this stage is minimal, speculative, and outweighed by the direct and immediate irreparable harm which the Plaintiff EDS would suffer if the injunction were not to issue.

3. The Impact of Injunctive Relief Upon the Public Interest.

The third factor which the equity jurisprudence of this Circuit compels this Court to examine is the impact that the injunctive relief prayed for in this action would have upon the public interest. Although I find this factor to be necessarily intertwined with the balance of harms among the respective parties, as well as with the final factor, the likelihood that Plaintiff will prevail on the merits, I treat the issue as the parties have characterized it in their briefs. EDS takes the position that the issuance of an injunction in this action is necessary for the preservation of constitutional rights of litigants to due process as well as the preservation and integrity of the Judicial Branch. In support of their position, they cite the district court opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 103 F.Supp. 569, 579 (D.D.C.), *Aff'd* 343 U.S. 579 (1952). In *Youngstown*, the District Court decided the issue of the constitutionality of the President's Executive Order prior to analyzing the impact of injunctive relief upon the public interest, an analysis which this Court does not undertake at this time. After concluding that President Truman's Executive Order directing the Secretary of Commerce to take possession of certain steel manufacturing plants was unconstitutional, the Court recognized the strong public interest in adherence to "government as it is known under the Constitution." *Id* at 577. In conjunction with this aspect of the public interest, I note that both the orders and judgments of this Court, and the orders of the Southern District of New York in aid of ultimate satisfaction of this judgment were rendered pursuant to jurisdiction conferred by Congress in the Foreign Sovereign Immunities Act (hereinafter "FSIA"), 28 U.S.C. §§ 1330, 1602, et seq. Further, Article III of the United States Constitution provides that judicial power of the United States "shall be vested in one Supreme Court, and in such inferior courts as the Congress may

from time to time ordain and establish." It could not be any clearer than that the judgment and orders of this Court as well as the orders of the Southern District of New York were rendered pursuant to Constitutional and statutory authority. If I assume that the judgment entered in this case is a valid, subsisting judgment, which I think I must, then Executive Order 12279 raises serious constitutional issues with regard to the power of the Executive Branch to nullify or negate the constitutional and statutory authority of Article III Courts with respect to pending cases. As one court has stated, it must "be assumed that the Constitution is the ultimate expression of public interest." *Llewelyn v. Oakland County Prosecutor's Office.* 402 F.Supp. 1379 (E.D. Mich. 1975).

It is well established that the public interest may be declared in the form of a statute, in addition to the mandate of the Constitution. See 11 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE, § 2948 at 460 and cases cited therein. EDS takes the position that the "All" Writs Act, 28 U.S.C. § 1651 provides just such a statutory statement of the public interest with respect to this case. Section 1651 states that

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

The power conferred by the "All" Writs Act extends under appropriate circumstances, to persons, who though not parties to the original action or engaged in wrong doing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice." *United States v. New York Tele-*

phone Co., 434 U.S. 159, 174 (1977). The Supreme Court in *New York Telephone Co.* similarly stated that "[t]his Court has repeatedly recognized the power of a federal court to issue such commands under the "All" Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." *Id* at 172. It is beyond purview that the powers granted by Congress under Section 1651 include the powers to issue an injunction when necessary to effectuate the Court's orders and judgments. *Id.; Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 426-27 (1923). Further, "[i]t is axiomatic that the jurisdiction of the district court is not exhausted by the entry of a judgment, but rather continues until the judgment is satisfied." Plaintiff's Brief in Support of Application for Preliminary Injunction at page 14 and cases cited therein. It must be concluded then that Congress has expressed a strong public interest favoring the power of Federal Courts to protect the exercise of their jurisdiction and the effectuation of valid judgments.

In support of its position that the issuance of an injunction would harm the public interest the Government asserts that injunctive relief would interfere with the implementation of sensitive foreign policy and the diplomatic task of resolving an international crisis. They cite *Baker v. Carr*, 469 U.S. 186 (1952). In particular, they point to the *Baker* Court's discussion of justiciability and the political question doctrine. I have previously emphasized that the limited injunctive relief prayed for by EDS would have only a minimal impact upon the execution and implementation of foreign policy by the Secretary and the new administration. I note also that the issues in this case are not such that the factors enumerated in *Baker* with respect to the deter-

mination of "political questions," Id at 217., dictate non-judiciability. In *Baker*, the Supreme Court stated:

> Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action.

Id. at 211. Hence, I conclude that the public interest will be advanced by the issuance of limited injunctive relief in this action. Once again, however, I emphasize that this determination is inseparable from the issues of relative harm to the respective parties from the issuance of an injunction, and from the serious constitutional questions which Plaintiff's application for an injunction has raised.

4. The Probability that the Plaintiff Will Ultimately Succeed on the Merits.

EDS asserts four distinct arguments going to the merit of its claims. First, it asserts that the Executive Order was not validly promulgated. Second, it asserts that the United States-Iran declarations and implementing documents are not applicable by their terms to the assets subject to the pre-judgment attachment issued by the District Court for the Southern District of New York. Third, EDS asserts that even if the declarations and Executive Order 12279 applied to the funds held in the custody of the U.S. Marshal in the Marine Midland Bank, Executive Order 12279 is devoid of statutory authority. Finally, EDS claims that if the Executive Order is applicable to the assets in question and is otherwise valid, it is unconstitutional. At the outset, I note that the Federal Defendants have declined to address the

merits of Plaintiff's claims. See Federal Defendants' Memorandum in Opposition to Application for Preliminary Injunction at page 7, n.6. I review these claims under the well established standards set forth by the Court of Appeals for the Fifth Circuit; Plaintiff must show a "substantial likelihood that it will ultimately succeed on the merits." *E.g. Canal Authority supra*, at 572.

(a) The Validity of Executive Order 12279.

It is undisputed from the evidence that on January 19, 1981, Jimmy Carter, while President of the United States, signed Executive Order 12279. Under the Declaration, the action provided for in said Executive Order was not to take effect until certification by the Government of Algeria that the fifty-two United States hostages had safely departed from Iran. The parties agree that this event did not occur during the Carter Presidency. On January 20th, 1981, Ronald Reagan assumed the office of President of the United States of America, and shortly thereafter at approximately 12:35 p.m., Eastern Standard Time, American diplomatic and other personnel were released from captivity in Iran. Executive Order 12279 was first filed at the office of the Federal Register on January 22, 1981, and first published in the Federal Register on January 23, 1981. The Executive Order has never been signed by Ronald Reagan, President of the United States.

EDS argues persuasively that at the time the Executive Order was validated, Jimmy Carter was no longer President of the United States and accordingly that the Order is without legal effect. In support of its position, EDS cites §§ 1505(a) and 1507 of Title 44 of the United States Code, entitled Public Printing & Documents. EDS also cites the 20th Amendment to the United States Constitution. Section 1505 of Title 44 provides that Executive Orders having

general applicability and legal effect shall be published in the Federal Register. Section 1507 provides that the document required by Section 1505(a) to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by Section 1503 of Title 44. The Twentieth Amendment to the United States Constitution provides that "[t]he terms of the President and Vice-President shall end at noon on the twentieth day of January, ..." Although Executive Order 12279 states by its own terms that it is "effective immediately" (see Section 1-106), EDS offers another version of Executive Order 12279 which was signed by President Carter on January 18th (which was never published in the Federal Register) to illustrate its point that the Order could not have been effective immediately upon the signing by the President (See Exhibit J to Plaintiff's Brief in Support of Application for Preliminary Injunction). Moreover, EDS argues that Point Three of the Declaration entered into between the United States and Iran stipulates that the issuance of Executive Order 12279 was expressly contingent upon the occurrence of an event which did not transpire during Mr. Carter's term of office: certification by Algeria that the 52 American hostages had "safely departed from Iran." EDS contends that "though presigned and dated, the Order was at best a possible future act when President Carter left office."

This issue raises a unique and novel question of law. The Court has been unable to find any case authority directly in point and the parties have not cited the Court to any such authority. The mandate of the Twentieth Amendment to the Constitution, however, as well as the

sequence of events leading to the promulgation of Executive Order 12279 indicate that there is a substantial likelihood that the Executive Order was not validly promulgated during President Carter's term of office. Therefore, I conclude that Plaintiff has shown a substantial likelihood of success on the merits.

(b) The United States-Iran Declarations and the Implementing Documents are not Applicable to the Instant Case.

EDS seeks a declaratory judgment that the Declaration between the United States and Iran as well as Executive Order 12279 are not applicable to the assets which are the subject of a pre-judgment attachment entered prior to the promulgation of the Iranian Assets Control Regulations, 31 C.F.R. Part 535, on November 14, 1979. On June 13, 1979, the District Court for the Southern District of New York entered an order providing for the pre-judgment attachment of Iranian funds and directed the United States Marshal to take custody of those funds in the Marine Midland Bank. EDS argues that the statement of general principles in the Declaration entered into between the United States and Iran evidences the intent of the parties to "restore the financial position of Iran, insofar as possible, to that which existed prior to November 14, 1979." EDS also suggests that the Executive Order is applicable only to funds which were frozen as a consequence of the Iranian Assets Control Regulation on November 14, 1979. EDS points to language in Executive Order 12279 to the effect that the Order was issued to implement the agreements with the Government of Iran, as reflected in the Declaration. In addition, EDS places emphasis upon Section 1-102(b) of the Order which is set forth in full above. Although Section 1-102(b) can arguably be construed to include only those "rights, powers, and privileges relating to the proper-

ties described in Section 1-101 . . . which derive from any attachment, . . . after November 14, 1979," the Court is of the opinion that such a reading of the Order is tenuous. Despite the fact that Executive Order 12279 is not a picture of clarity, it appears that a proper construction of the Order is that it encompasses all the assets legally or beneficially owned by the Government of Iran which are in the possession of any United States banking institution. The basis for this construction is Section 1-101 and Section 1-102(c) of the Order. Therefore, I conclude that Executive Order 12279 is by its terms applicable to the funds held in the Marine Midland Bank. Although a part of Executive Order 12279 (in conjunction with the statement of General Principles in the Declaration entered into between the United States and Iran) is susceptible to the construction urged by EDS, the balance of the language in the Order indicates a contrary construction. With respect to this issue then, I conclude that EDS has not shown a substantial likelihood that it will ultimately prevail on the merits.

(c) Even If Applicable to EDS, The Executive Order is Devoid of Statutory Authority.

Executive Order 12279 cites as statutory authority for its directives the International Emergency Economic Powers Act (hereinafter "IEEPA"), 50 U.S.C. § 1702 and an 1868 statute, 22 U.S.C. § 1732. EDS argues that neither of these statutes supports the powers asserted in the Executive Order.

The IEEPA grants the President the powers set forth in Section 1702 to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part out side the United States, to the national security, foreign policy, or economy of the United States, if the President

declares a national emergency with respect to such threat". 50 U.S.C. § 1701(a). To the extent that this condition is satisfied, Section 1702(a)(1) of the Act provides that

> the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit—
>
> (i) any transactions in foreign exchange,
>
> (ii) transfers of credit or payments between, by, through or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
>
> (iii) the importing or exporting of currency or securities; and
>
> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit any acquisition, holding, withholding, use, transfer, withdrawal, transportation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States.

Congress passed the IEEPA in 1977 to replace the peacetime authority for Presidential action in emergencies that previously existed in Section 5(b) of the Trading With the Enemy Act — the statute criticized by Congress for having "become essentially an unlimited grant of authority for the President to exercise at his discretion, broad powers in both the domestic and international economic agreement without Congressional review." H.R. Rep. No. 459, 95 Cong., 1st.

Sess. 7 (1977) With the IEEPA, Congress substituted a more limited set of powers limited to the regulation of international economic transactions. Id. at 10-11. The grant of authorities under IEEPA expressly excluded certain authorities granted to the President under Section 5(b) of the Trading With the Enemy Act including "the power to vest, i.e., to take title to foreign property." *Id.* at 15; S.Rep. No. 466, 95 Cong., 1st Sess. 5 (1977) hereinafter "S.R."). Thus, it is clear that under the authority of IEEPA the President may "freeze but not seize" assets in which a foreign national has an interest. Although EDS asserts that IEEPA makes no reference whatsoever to attachments, court orders or other exercises of a court's jurisdiction, the plain language of sub-part (B) of Section 1702 grants the President authority to nullify or void the exercise of any right, power, or privilege with respect to any property in which a foreign country or national has any interest.

Executive Order 11279 directs and compels the transfer of Iranian funds in the possession of banking institutions. "[T]o the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury." In essence, the Order directs that the funds in which Iran has an interest be transferred to the control of the Executive Branch and attempts to vest custody and control of the assets in the Executive. This is a power which Congress declined to grant to the President with the enactment of IEEPA in 1977. Therefore, insofar as the Executive Order attempts to vest custody and control of the assets in question in the Executive Branch, such a directive is without Congressional authority. In addition, any claim that the language of Section 1702 was intended to limit or nullify the jurisdiction of Article III Courts was effectively refuted in a recent decision involving the Iranian Assets Control

Regulations. In *National Airmotive Corporation v. Government State of Iran*, 499 F.Supp. 401, 404-05 (D. D.C. 1980), the Court refused to accept the interpretation of the Government of the United States that Section 504(d) of the Freeze Regulations 31 C.F.R. 535.504(b) precluded further judicial proceedings. Citing "the familiar canon that a construction involving unconstitutionality is to be avoided if at possible", the Court stated that the Government's interpretation would give rise to grave Constitutional difficulties:

> A bar on judicial consideration of Plaintiff's claims on the basis proposed by the Government would legitimize an attempt on the part of the Executive Branch, through Treasury Regulations, to limit the jurisdiction of the federal courts. Whether Congress itself could restrict federal court jurisdiction by statute remains an unanswered question of the type that the courts are reluctant to explore 'absent the clearest indication that such was the intent of Congress.' Whatever may be the authority of the Congress in this regard, it has rarely, if ever, been suggested that an Executive Agency may, by regulation, bar the courts from operating with respect to particular subject matters, The Constitutional difficulties that would be raised by an attempt to impose such a bar are too numerous to catalog or explore here.

Id at 405 (citations omitted).

I likewise concluded that despite the language in § 1702 that the President may nullify or void the exercise of any right, power or privilege with respect to property in which a foreign country or a national thereof has any interest, Congress could not and did not intend to grant the President power to nullify or void valid exercise of the judicial power by Article III Courts. Therefore, I conclude that the directives of Executive Order 12279 do not fall within the powers granted to the President by IEEPA.

As stated above, Executive Order 12279 also relies upon 22 U.S.C. § 1732 as authority for its directives. Section 1732, enacted in 1868, and entitled "Release of Citizens imprisoned by foreign governments," provides that:

> Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

The aging statute has seldom attracted the attention of the courts. It is most often characterized as a mandate by Congress that the President afford assistance to American citizens in trouble abroad. *Worthy v. Herter*, 270 F.2d 905, 910 (D.D.C. 1959); *Narenji v. Civiletti*, 481 F.Supp. 1132, 1141 n. 7 (D.D.C. 1979), rev'd on other grounds, 617 F.2d 745 (D.C. cir. 1979), *cert denied*, ...U.S....., 100 S.Ct. 2928 (1980). In *Worthy*, *supra*, the Court indicated that the instrumentalities which the President must use to fulfill this Congressional mandate are "diplomatic or foreign-service consular." It has never been suggested that the statute vests the Executive Branch with the power to nullify valid orders and judgments of the Judicial Branch. As I have concluded with respect to the IEEPA, I similarly conclude that Congress could not and did not intend with the

enactment of Section 1732 to grant the executive power to nullify valid orders and judgments of Article III Courts issued pursuant to the Foreign Sovereign Immunities Act. Thus, the Plaintiff has made the requisite showing of substantial likelihood of success on the merits with respect to this claim.

(4) If applicable, and otherwise valid, Executive Order No. 12279 is Unconstitutional.

I have alluded earlier in the course of this opinion to the serious constitutional questions which the application and execution of Executive Order 12279 raises. For the purposes of this application for a preliminary injunction, the constitutional issue must necessarily be characterized in two alternative forms. I have concluded above that Congress did not, with the passage of the IEEPA authorize the President to invalidate or void orders of Article III Courts issued pursuant to an express Congressional grant of jurisdiction under the Foreign Sovereign Immunities Act. The resolution of the constitutional issues in this context will thus be limited to the naked powers of the Presidency absent concurrence from Congress. In the event, however, that I am mistaken with reference to the intent of Congress as to the powers granted to the President under the IEEPA then the constitutional issues must be examined in a different light. Prior to a discussion of these issues it is important to note the practical effect of Executive Order No. 12279 with regard to the posture of this case. The undisputed effect of the Order is such that the pre-judgment order of attachment issued by the District Court for the Southern District of New York is negated for all practical purposes. In addition, Executive Order 12279 effectively negates the judgment entered in favor of the Plaintiff by this Court. Therefore, the constitutional issues resolve to the power of either the Executive

Branch or Congress to negate or countermand valid orders of Article III Courts issued pursuant to an express Congressional grant of jurisdiction under the Foreign Sovereign Immunities Act.

It is undisputed that the Executive Order directing the transfer of funds subject to the Plaintiff's pre-judgment attachment to the custody of the Secretary of the Treasury was promulgated and published subsequent to the issuance of a final judgment by this Court. The directives of Executive Order 12279 by their express terms invalidate the pre-judgment attachment order issued in the Southern District of New York and in practical effect negate the final judgment issued by this Court. If the Order of pre-judgment attachment issued by the Southern District of New York as well as the final judgment issued by this Court are valid, then the pertinent inquiry is whether either Congress or the Executive can subsequently nullify those exercises of the judicial power. It is my conclusion that neither Congress nor the Executive have such authority, with the exception of certain limited instances not pertinent to the circumstances of this case. There is more than ample authority for the proposition that neither Congress, the Executive, an Executive Agency, nor a State Legislature may by subsequent acts negate, disregard, or nullify the judgment of the Court already rendered, or the rights determined thereby. *Chicago & Southern Airlines v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948); *Hodges v. Snyder*, 261 U.S. 600, 603 (1923); *McCullough v. Virginia*, 172 U.S. 102, 123-24 (1898); *United States v. Klein*, 80 U.S. (13 Wall.) 128 147 (1872); *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.), 421, 431 (1856); *United States v. Peters*, 9 U.S. (5 Cranch), 115, 136 (1809); *Daylo v. Administrator of Veterans' Affairs*, 501 F.2d 811, 818 (D.C. Cir., 1974); *Hoyt*

Metal Co. v. Atwood, 289 F.453 (7th Cir. 1923); *Cerro Metal Products v. Marshall*, 467 F.Supp. 869, 877-78 (E.D.Pa. 1979), *Aff'd*, 620 F.2d 964 (3rd Cir. 1980). If such power were to be vested in coordinate branches of the Government, "the finality and independence of judicial action would be in jeopardy." *Cerro, supra* at 877. Article III of the United States Constitution and the Congressional grant of jurisdiction in the Foreign Sovereign Immunities Act provided this Court with the judicial power to adjudicate the issues in this case. Concommittant with that power is the power and duty of this Court to see that its orders and judgments are effectuated. Therefore, I am compelled to concluded that Executive Order 12279, with or without the blessings of Congress, is constitutionally invalid insofar as it attempts or purports to countermand or nullify valid exercises of the judicial power reflected by the judgment of this Court and attachment order of the District Court for the Southern District of New York.

The impact of Executive 12279 poses a similar and related constitutional issue concerning the power of either the Congress or the Executive to delimit the jurisdiction of Federal Courts. As stated above, the power to adjudicate the issues raised in this action derives from Article III of the Constitution and the Foreign Sovereign Immunities Act. It is well established that only Congress can confer and redefine the jurisdiction of United States Courts. *Palmore v. United States*, 411 U.S. 389, 401 (1973); *Glidden Co. v. Zdanok*, 370 U.S. 530, 551 (1962) *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943). Therefore, Executive Orders lacking Congressional approval or authority cannot possibly interfere with the exercise of jurisdiction by Federal Courts. Even if Congress intended to grant the President authority to interfere with the exercise of jurisdiction of Federal Courts, I am of the

opinion that there are limitations which Congress must observe in so doing. The foremost limitation on that power was succinctly delineated in *Battaglia v. General Motors Corporation*, 169 F.2d 254, 257 (2nd Cir.), *cert. denied*, 335 U.S. 887 (1948):

> We think, however, that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of Courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty or property without due process of law or to take private property without just compensation.

There can be little doubt but that EDS has a property interest in the judgment issued by this Court cognizable under the Fifth Amendment. *See Armstrong v. United States*, 364 U.S. 40 (1960). Executive Order 11279 appropriates to the custody of the Executive Branch funds held in the custody of a U.S. Marshall pursuant to a valid exercise of the judicial power. Executive Order 12279 further effectively deprives EDS of meaningful access to the Federal courts which have been vested with jurisdiction under Article III of the Constitution and the Foreign Sovereign Immunities Act. Once again, I am compelled to conclude that, even with the blessing of Congress, this intrusion by the Executive Branch into the carefully designed contours of Federal Court jurisdiction is untenable under the Constitution of the United States.

With respect to any assertion that the directives of Executive Order 12279 are within the inherent or implied powers of the President as Commander-in-Chief, I note that the facts in this case closely resemble those in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). I have concluded

above that with the passage of IEEPA Congress expressly declined to preserve a power previously available to the President under the Trading With the Enemy Act — the power to vest custody and control of foreign assets in the Executive Branch. Likewise, in *Youngstown* Congress had expressly declined to grant the President the power to seize steel manufacturing plants during times of emergency. *Id.* at 585-586, 597-602. In the words of Justice Jackson (concurring)

> [w]hen the President takes measures incompatible with the expressed or implied will of Congress his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

Id. at 637-38 (Jackson J. concurring). Just as the Court in *Youngstown* concluded that President Truman was without statutory or constitutional authority to seize the nation's steel mills, I likewise conclude that President Carter was without statutory or constitutional authority to order the vesting of foreign assets in the custody and control of the Executive Branch.

In sum, I conclude that Executive Order 12279 suffers from serious constitutional deficiencies. It is my opinion that with the enactment of IEEPA, Congress did not intend to grant the President the power to (1) countermand or invalidate judgments of Article III Courts issued pursuant to any express Congressional grant of jurisdiction under the Foreign

Sovereign Immunities Act, (2) to interfere with the valid exercise of Congressionally granted jurisdiction by Article III Courts, or (3) the power to vest foreign assets located in the United States in the custody and control of the Executive Branch. Nevertheless, if I am wrong with regard to the intended reach of IEEPA, I likewise conclude that the Act itself is not in harmony with the United States Constitution. Congress may, of course, repeal the Foreign Sovereign Immunities Act and eliminate the statutory basis for jurisdiction over future claims cognizable under that Act. Neither the President nor Congress, however, may by Executive fiat delimit jurisdiction already obtained and exercised.

Any Finding of Fact set forth herein which is a Conclusion of Law shall be deemed as such, and any Conclusion of Law which is a Finding of Fact shall be deemed as such.

E. Conclusion

I must once again emphasize that the federal Defendants have declined to brief the merits of the issues raised by the Plaintiff. Therefore, I decline to undertake the analysis utilized by Judge Pine in *Youngstown Sheet & Tube Co. v. Sawyer*, 103 F.Supp. 569, 573 (D.D.C. 1952), *aff'd* 343 U.S. 579 (1952). Thus, my findings relative to the validity of Executive Order 12279 under the pertinent statutes and the United States Constitution are preliminary, and not ultimate conclusions of law.

I have little difficulty in concluding that the Plaintiff has carried its burden in this proceeding and that the injunction prayed for should issue. I also believe that even under the heightened standard of review suggested by the federal Defendants (see part B supra) the Plaintiff has carried its burden. I am ever mindful that the grant of a preliminary

injunction is a "drastic remedy" under the settled law of this Circuit but nonetheless conclude that the injunction which will enter in this action will have minimal impact upon the federal Defendants. Furthermore, because of the serious constitutional infirmities of Executive Order 12279 I believe that it is my duty to grant Plaintiff's prayer for relief. Congress expressly granted this Court jurisdiction to hear claims such as the Plaintiff's with the enactment of the Foreign Sovereign Immunities Act. Article III of the United States Constitution vests this Court with the judicial power to enter judgments and orders within the scope of Congressional grants of jurisdiction. I cannot ignore these principles and neither may the Executive. Neither can I acquiesce in an unwarranted intrusion into the powers of the Judicial Branch by Congress or the Executive. Congress is free to repeal the Foreign Sovereign Immunities Act, but the President may not do so by Executive fiat. In sum, I have concluded that the injunction must enter.

It is so ORDERED this 12th day of February, 1981.

/s/ ROBERT W. PORTER

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELECTRONIC DATA SYSTEMS CORPORATION IRAN

vs.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, ET AL.

No. CA3-79-0218-F

PRELIMINARY INJUNCTION

On the 3rd day of February, 1981, came on to be heard the Application of Plaintiff Electronic Data Systems Corporation Iran for a Preliminary Injunction in its proceeding in aid of judgment in the above entitled and numbered cause. All parties hereto received due notice of said hearing in accordance with the Order setting Hearing on Application For Preliminary Injunction in Aid of Judgment entered on January 23, 1981, and appeared by counsel at said hearing.

Based on the Findings and Conclusions set forth in this Court's Memorandum Opinion of even date, the Court has determined that Plaintiff's Application for Preliminary Injunction should be Granted.

Accordingly, it is ORDERED THAT:

Defendants Donald T. Regan, the Secretary of the Treasury of the United States of America, and the United States of America, their officers, agents, servants, employees, and attorneys, and all persons acting in active concert or participation with them who receive actual notice of this Preliminary Injunction by personal service or otherwise, be

and they are hereby, restrained during the pendency of this proceeding in aid of judgment from directly or indirectly taking any action of any nature whatever nullifying, impeding or interfering with, or in any other way affecting or relating to:

(1) The validity or enforcement of said Final Judgment issued by this Court or the attachment entered by the United States District Court for the Southern District of New York on June 13, 1979, for the purpose of securing said Final Judgment, including the transfer, purported transfer, or any direction to transfer, or the taking of any action in any way impeding or interfering with the availability to Plaintiff of, funds relating to said attachment; or

(2) The jurisdiction of this Court or any other federal court with respect to said Final Judgment, said attachment or said funds or Plaintiff's right to enforce its legal rights in United States Courts or by process of such courts.

This Preliminary Injunction does not prohibit said Defendants from promulgating regulations designed to implement Executive Orders 12276 — 12285 provided, however, that such regulations or other actions shall not have any of the effects prohibited herein.

It is FURTHER ORDERED that this Preliminary Injunction shall become effective only upon Plaintiff's execution and filing with the Clerk of the Court of a bond in accordance with law in the sum of $1,000.00 conditioned that Plaintiff will abide the decision which may be made in this case and that it will pay all sums of money and costs which may be adjudged against it.

/s/ ROBERT W. PORTER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELECTRONIC DATA SYSTEMS CORP. IRAN

vs.

SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, THE GOVT. OF IRAN

No. CA3-79-218-F

ORDER

The above-referenced cause came on before the Court, the Honorable Robert W. Porter, United States District Judge, presiding. Based on the evidence presented by the parties, the Court makes its findings of fact and conclusions of law as set forth below:

FINDINGS OF FACT

1. Plaintiff Electronic Data Systems Corporation Iran ("EDSCI") is a wholly-owned subsidiary of EDS World Corporation, which itself is a wholly-owned subsidiary of Electronic Data Systems Corporation ("EDS"). All are Texas corporations that provide a range of data processing services in areas including health insurance and government services.

2. Defendant Government of Iran ("The Government") is a sovereign entity.

3. Defendant Ministry of Health and Social Welfare ("The Ministry") is funded from the Government and is charged with responsibility over various agencies and organizations related to health and social welfare programs in Iran.

4. Defendant Social Security Organization of the Government ("SSO") is an agency of the Ministry, and is a recognized legal entity under Article 12 of the Social Security Law of Iran. The laws provide that the SSO possesses both financial and administrative independence. It is funded from social security premiums, with the Government contributing 3% of its budget annually.

5. In September 1974, EDS sought to expand its business to include international operations. EDS considered Iran to be a possible source of business because of Iran's public commitment to development and its recent health care legislation, which was not dissimilar to such legislation in this country.

6. In 1975 EDS undertook discussions with an Iranian group that included Mr. Abofath Mahvi ("Mahvi Group"), with a view toward EDS doing business in Iran through a joint venture arrangement. EDS ultimately entered into a relationship with the Mahvi Group, for which the Iranian partners provided expertise regarding local laws and practice and other services.

7. In May 1975 EDS learned that the Ministry was actively interested in procuring data processing services and that the Ministry had received and was considering several proposals from various companies for computer resources to process an anticipated increase in premium collections and benefits disbursements from recent Iranian social security legislation.

8. At its Dallas, Texas headquarters, EDS prepared a preliminary study of automation needs of the Ministry. After consideration of this study, the Ministry requested an additional, more detailed presentation.

9. During the summer of 1975 EDS prepared a second study. This effort comprised eight volumes, one relating to management of an entire Ministry system and one volume each for separate Ministry programs, including the Social Security program. EDS sent numerous employees to Iran to gather data for its study, and other EDS employees worked in Dallas to analyze the data and prepare the approach ultimately presented.

10. The second program was offered in October 1975 to the Deputy Minister's Counsel of Health and Welfare. Also present were various Ministry officials for the different areas studied, as well as representatives of the Government's Planning and Budget Organization ("PBO"). EDS employees subsequently met with officials of the various Ministry departments for more intensive discussions to elicit and incorporate internal user approval.

11. At the end of 1975, EDS World presented to the Minister for Health and Social Welfare a draft of a contract that offered its data processing services to establish and operate "a national health insurance and social welfare data processing system for the Ministry."

12. PBO approved the contractual provisions, including prices, and also approved EDS World as the contracting entity. The contractual language ultimately accepted refers to EDS World as the parent of EDSCI.

13. EDSCI thereafter received all approvals that the Defendants represented to it were necessary. The conduct of the Defendants demonstrates their recognition of fulfillment of approval prerequisites to the contract's validity.

14. The contract was approved by the Prime Minister and the Shah after modifications that lowered price and added certain services. With these modifications, a letter

of intent was signed on August 4, 1976 between EDS World and Dr. Sheikoleslamzadeh, the Minister of Health and Social Welfare. In addition, the contract was approved by both the Council of Ministers and the Deputy Ministers Council.

15. EDSCI was formally incorporated in September 1976 as a wholly-owned subsidiary of EDS World.

16. The contract was signed on September 25, 1976 by EDSCI and by "the Social Security Organization, an agency of the Ministry of Health and Social Welfare." The Ministry's Deputy for Social Security Affairs signed for SSO.

17. The contract was subject to a letter of approval by the PBO and to review by the Ministry's legal staff. These conditions were fulfilled prior to commencement of performance on the contract. The contract was dated November 2, 1976, to be effective November 22, 1976.

13. The Ministry participated in and controlled SSO's negotiations to the contract. SSO's acts relating to the contract were done on behalf and under control of the Ministry. SSO acted as an agent of the Ministry, with authority to make contractual commitments on behalf of the Ministry.

19. Employees and officials of the Ministry and of SSO came to the United States in connection with the contract here at issue, for the purposes of negotiations and observations relative to EDS' services.

20. At approximately the time of the contract's signing, the Mahvi Group raised with EDS a contention that the parties' joint venture organization, PARS Data System ("PDS"), was the proper signatory to any Iranian contract, including the contract at issue here.

21. The Ministry became aware of the dispute and contacted EDS to express its desire that any disagreement be resolved before performance began under the contract. The Ministry did not dictate or suggest a desired outcome of the squabble, but merely indicated that the widespread approval it desired for the contract would not be furthered by any apparent uncertainty as to the name of one of the contracting parties.

22. Neither EDSCI nor anyone on its behalf procured the contract unlawfully. No evidence showed bribery of any official or employee of Defendants in order to secure the contract, nor did the evidence suggest the existence of fraud or public corruption in the procurement of the contract.

23. EDSCI was awarded the contract after an open process and in preference to proposals of several other companies. The evidence did not show that EDSCI enjoyed any improper advantage relative to the award.

24. EDSCI began work under the contract on November 22, 1976.

25. The contract called for EDSCI's provision of data processing services for SSO and for the Office of Her Imperial Majesty, the Shahbanou of Iran. The contract was to be fully performed in three years, structured in three one-year phases, during which EDSCI was responsible for definition, development, installation, operation, programming and maintenance of data processing systems.[1] The contract contemplated EDSCI's recruiting and training an Iranian technical staff to ultimately achieve Iranian technical operation of the system.

26. The price of the contract was not exhorbitant; rather, the evidence showed that the price was reasonable and in

accordance with amounts charged by EDS to others for similar services. The price did not compare unfavorably with amounts charged by others in the health care industry for similar services.

27. In January 1977, EDS and the Mahvi Group reached an agreement to reorganize PDS and to enter into a subcontract between EDSCI and PDS for PDS' recruitment of qualified Iranian employees for those jobs under the contract that were to be performed by Iranians. In addition to recruiting, PDS was to pay applicable employee salaries and bonuses, costs of social security premiums, health insurance supplement bonuses, and was responsible for employee grievances. EDSCI sought and received the Ministry's approval for its subcontract with PDS.

28. The contract called for an initial payment due upon execution of the contract and before commencement of performance. In addition, Annex E to the contract set forth the procedure by which EDSCI would submit monthly invoices for payment in sums set by the contract schedule.

29. The contract was self-described as output-oriented, in that it established a fixed price for a total service. Payments were to be made with reference to a schedule of payments and were not tied to specific output. In the event that SSO chose not to accept an invoice tendered by EDSCI, the contract required that "SSO must so notify EDS in writing stating the reasons for non-acceptance within five days of submission of the EDS invoice, otherwise said invoice shall be considered valid and due and payable in full."

30. EDSCI submitted all invoices in accordance with contractual procedure. SSO regularly made payment of the initial pre-performance amount, as well as of monthly invoices submitted through July 1978, representing 18

months' payment of invoices through Ordivehesht 2537 (April 22-May 21, 1978).

31. During June through November 1978, EDSCI presented monthly invoices to SSO totaling $10,808,000, in accordance with Article 11.1 and Annex E, describing contractual procedure and terms.[2] No invoice was rejected by the procedure outlined at Article 17.2, and none has been paid.

32. EDSCI submitted invoices on December 2, 1978 for cost of living adjustments for the months Farvardin through Aban 1357 totaling $2,820,496. In accordance with Article 11.5 of the contract, computations were made by comparing the Bank Markazi Iran's current cost of living index with the cost of living base index in effect at the date of the contract, minus six percent.

33. EDSCI incurred travel and related expenses for individuals associated with a hospital project. EDSCI submitted an invoice for $2,688 in October 1978 pursuant to Article 12.2 of the contract. EDSCI incurred expenses of $4,210 for relocating Turner Staples. An invoice in this amount was submitted in October 1978 pursuant to Article 12.2 of the contract. The sums expended were not shown to be unreasonable, and represented expenses authorized by advance written approval from SSO.

34. EDSCI paid social insurance payments in excess of amounts it had paid for the base social insurance payment in existence at the time the contract was signed. Pursuant to Article 14 of the contract, EDSCI submitted an invoice totaling $190,465 for such payments.

35. At SSO's request, EDSCI arranged for Dr. Y. Towliati to be assigned from PDS to SSO as manager of the com-

puter project. EDSCI incurred expenses for compensation paid on his behalf for the period May 1977 to November 1978. In accordance with Article 2.2, EDSCI submitted an invoice in the amount of $6,842,428 rials, or $99,307, for this expense.

36. EDSCI was not paid for any of the invoices described in facts 31 through 35 above. EDSCI's employees made continuous and sincere efforts to contact SSO and the Ministry to inquire about payments due. The Defendants did not declare by writing or otherwise, or evidence by any act, an intention to reject any of these invoices; indeed, SSO and Ministry officials repeatedly assured EDSCI that payments due would be received.

37. The failure by SSO and the Ministry to provide written notice of non-acceptance of unpaid invoices was inexcusable and therefore constituted a breach of the contract. The assignment of Dr. Towliati to SSO as Deputy Managing Director did not effect such an excuse. I do not find evidence that Dr. Towliati's services influenced the process of approval for invoices, nor do I find evidence that Dr. Towliati functioned improperly in his review of performance under the contract. Rather, the evidence showed that the Ministry and SSO had full and continuous opportunity to monitor EDSCI's performance.[3] Moreover, I do not find credible evidence of trickery or that EDSCI conspired with anyone to gain wrongful approval for payment of its invoices or to deny the Defendants fair opportunity for their evaluation of EDSCI's performance under the contract.

38. The Defendants were not prevented from paying invoices because of conditions, causes or events beyond their reasonable control.

39. Article 17.2 of the contract permitted SSO to terminate the contract for any reason, subject to its giving thirty days' notice before termination. No such notice was given. The Defendants failed to declare by writing or otherwise an intention to cancel the contract.

40. Article 17.2 governs procedure applicable in the event that SSO believed that EDSCI defaulted in its performance: SSO was to give written notice to EDSCI specifying the default and giving EDSCI an opportunity to cure the noticed default. Until such time as EDSCI failed to cure the default, SSO's contractual obligations remained. The Defendants tendered no written notice to EDSCI of any claimed default in accordance with Article 17.1, nor did SSO or the Ministry communicate a belief that EDSCI was not performing or had not performed its contractual duties.

41. The Defendants had full and fair opportunity to review EDSCI's performance through periodic performance meetings convened for that purpose and by their review of EDSCI's monthly progress reports.

42. EDSCI did not materially breach its performance obligations under the contract; rather, EDSCI substantially performed in accordance with the description and timing of its duties for each applicable phase up until January 16, 1978, the date of termination of the contract.[4] Performance of duties under the contract took place in Iran and, in the case of portions of program work and administrative matters in Dallas.[5]

43. EDSCI delivered formal notices of default to the Ministry in accordance with the procedure mandated in Article 17.3, providing that it give notice of claimed default, opportunity to cure, and if cure be not effected, notice of termination. Until the date of termination, EDSCI was

obligated to and did continue its duties under the contract. The formal letter of termination was delivered on December 16, 1978, and declared EDSCI's intention to terminate the contract as of January 16, 1979 should payment not be received and default not cured.

44. As of January 16, 1979, EDSCI had received no payments other than those timely made through July 15, 1978.

45. EDSCI filed this suit on February 23, 1979 and served all Defendants in compliance with service of process provisions of the Foreign Sovereign Immunities Act.

46. The property that is the subject matter of the preliminary injunction issued by this Court on June 11, 1979 is the property of the Government of Iran.

47. Any finding of fact that is also a conclusion of law is here deemed to be a conclusion of law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the controversy presented in this lawsuit pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1600 *et seq.* and 2201, and over each Defendant.

2. This action is based upon a commercial activity carried on in the United States by the Ministry and by the SSO, upon an act performed in the United States in connection with a commercial activity by the Ministry and by the SSO, and upon an act outside the territory of the United States in connection with a commercial activity of the Ministry and of the SSO elsewhere that caused a direct effect in the United States.

3. SSO is a juridical entity having legal existence and identity separate from the Government. The SSO's separate status stems not only from its authority to sue and to be sued, but from its function to collect premiums and disburse benefits pursuant to Social Security legislation. Consequently, the SSO stands on different footing from agencies that act as mere intermediaries for the Government, which disburse funds from and direct collections to the general government treasury. *Department of Agriculture v. Remund*, 330 U.S. 539 (1946).

4. The Ministry is a unit of government not displaying legal existence separate from the Government. Consequently, liabilities adjudged against the Ministry run as well against the Government.

5. SSO acted on its own behalf and on behalf of the Ministry during the negotiation, execution and performance of the contract. Agency principles, including the apparent authority doctrine have been applied to governments in the same manner as to any individual. *See Pierson v. United States*, 527 F.2d 459 (9th Cir. 1975); *Oman v. United States*, 179 F.2d 738 (10th Cir. 1949). *Mursor Builders, Inc. v. Roddy Realty, Inc.*, 459 F. Supp. 1317, 1324 (M.D. Pa. 1978). Consequently, the Ministry is a real party in interest on a contract made by its authorized agent.

6. Even had the facts been less convincing as to the agency relationship created between SSO and the Ministry, the Government is nonetheless subject to liability for the injury caused EDSCI, for the actions of the Ministry and SSO are properly attributable to the Government under the facts. The conduct of the Ministry and SSO are within the scope of actual or apparent authority of these entities. Restatement (2d) of Foreign Relations Law of the United States § 164.

7. Although otherwise suit against the SSO might acknowledge its independent status, the facts arising here do not justify that respect. The Defendants' own evidence demonstrated that funds for payment of the contract were received by SSO as reimbursements and were not to be charged ultimately against its statutory sources of income. Similarly, ample evidence showed that the Defendants themselves regarded the Ministry as the real party in interest.

8. The Ministry is alternatively liable as the alter ego of SSO on the contract. The alter ego theory is invoked upon proof that a parent entity dominates a subsidiary so that the subsidiary is an instrumentality or agent of the parent, in which case the Court may disregard the fiction of separateness. *Fitz-Patrick v. Commonwealth Oil Co.*, 28 F.2d 726, 730 (5th Cir. 1968). In such a case, the parent may be held on the contract obligations of its subsidiary. *Consolidated Rock Products Co. v. DuBois*, 85 L.Ed. 982 (1941). The evidence demonstrated for purposes of this transaction there was but one entity. Moreover, the Court will disregard the fiction of separateness where it is being asserted to work a manifest injustice. The evidence showed that the Ministry's own representations were to the effect that the agreement in issue was between the Ministry and EDSCI. Similarly, where authorization for payments was effectively controlled by the Ministry, it should not be permitted to hide behind the shield of nominal separation.[6]

9. Federal courts sitting in diversity apply the choice of law rules of the forum state.[7] In accordance with Texas' choice of law rules and with the parties' contractual designation, Iranian law applies to govern interpretation, validity and performance of the contract.

10. Public bidding was not required under exemption (ii) of Article 68 of the Public Accounting Law of Iran because the contract called for the services of experts.[8] A second exemption applies to excuse public bidding because the contract was one considered unique by the Minister of Health and Social Welfare. Moreover, even if the contract satisfied no exemption, Article 68 does not bar enforcement of the contract, for the Defendants failed to show by a preponderance of the evidence that EDSCI did not publically tender its bid for the contract or that the award of the contract to EDSCI did not obtain after an open and competitive process or that EDSCI failed to comply with the bidding process imposed by these Defendants. *R. H. Stearns Co. v. United States*, 291 U.S. 54 (1934).

11. Recovery under the contract is not barred by Defendants' claims, unsupported by the evidence, that EDSCI procured the contract by fraud, bribery or public corruption. Specifically, the evidence did not demonstrate that EDS' relationship with the Mahvi Group was illegal. EDSCI's execution of and performance under the contract violated no Iranian law.

12. EDSCI substantially performed its contractual obligations and did not materially breach the contract.

13. Beginning in July 1978, the Defendants failed to perform their contractual obligations, which performance was neither factually nor legally excused.

14. The Defandants' failure to notify EDSCI of non-acceptance of any invoices submitted by EDSCI for payment under the contract was neither factually nor legally excused.

15. Article 22 was not invoked under the facts to excuse Defendants' obligation to pay until the date of termination.

Behring International, Inc. v. Imperial Iranian Air Force, 475 F. Supp. 396, 401 (D.N.J. 1979).

16. The Defendants did not elect to terminate the contract at any time prior to EDSCI's notice of termination, and their failure to observe the procedure outlined in Article 17.2 was neither factually or legally excused.

17. All conditions precedent to validity of the contract occurred, including approvals by the Planning and Budget Organization and the Ministry's legal staff. Even if such approval had not occurred, the Defendants' conduct represents their waiver of such requirement and approval of the contract.

18. EDSCI may recover damages as described in the contract. Article 17.4(b) is a valid and enforceable provision for the measure of damages:

> Upon any termination pursuant to this Article 17 neither SSO or EDS will be obligated to the other except as provided in this Contract for other than amounts due on account of services performed or material supplied prior to the effective date of such termination and for services performed by EDS at SSO's request as provided in its Contract.

It is well established that parties may devise and courts will enforce contractual provisions for damages different from the common (or civil) law remedy, as long as those provisions are not unreasonable. Iranian law recognizes such a measure. *See* Article 230, Civil Code of Iran; Article 712, Code of Civil Procedure of Iran. The nature of this out put-oriented contract, which did not tie performance to scheduled payment, suggests that the provision actually settled upon was not inappropriate, unreasonable or unconscionable as a forecast of damages.

19. Article 17.4(b) permits EDSCI's recovery for monthly payments due in amounts set forth in Annex E of the con-

tract until the date of termination of the contract, in an aggregate amount of $10,808,000; for unpaid cost-of-living adjustments as provided in Article 11.5 and accruing until date of termination of the contract, in an aggregate amount of $4,057,734.00; and for reimbursable expenses as provided in Articles 2.2, 12.1 and 12.2 of the contract, in an aggregate amount of $311,670.00. The contractual provision under which EDSCI seeks recovery does not specifically provide for profits. *Hanson Southwest Corp. v. Dal-Mac Construction Co.*, 554 S.W.2d 712, 724-25 (Tex.Civ.App. — Dallas 1977), *writ refd n.r.e.* The provision similarly fails to include recovery of termination expenses. I will respect this provision as establishing a contractual measure of damages to which the parties are relegated, *Buhler v. McIntire*, 365 S.W.2d 237, 239-40 (Tex.Civ.App. — Austin 1963), *writ refd. n.r.e. See also Brewer v. Myers*, 545 S.W.2d 235 (Tex.Civ. App. — Tyler 1976), *no writ*. EDSCI bound itself to this measure as compensation for terms of the contract.

20. Texas' conflicts rules consider prejudgment interest to be a substantive matter, controlled by the law of the state where the cause of action arose. *Bott v. American Hydrocarbon Corp.* 458 F.2d 229, 231 (5th Cir. 1972), *citing Corrosion Rectifying Co. v. Freeport Sulphur Co.*, 197 F.Supp. 291, 293 (S.D. Tex. 1961). Article 719 of the Code of Civil Procedure of Iran permits recovery of prejudgment interest on the damages award at a rate of twelve percent, and therefore, EDSCI may recover such a percentage as prejudgment interest on the sums representing monthly payments, cost-of-living adjustments and reimbursable expenses from the dates each was due until the date of judgment.

21. The issue of attorney's fees is similarly resolved by examining Texas' choice of law rules. *Crescent Lumber & Shingle Co. vs. J. C. Rotherum Lumber Co.*, 218 F.2d 638

(5th Cir. 1955). Texas regards the issue of right to attorney's fees to be one of substantive rights governed by the law of the state where the substantive rights in ligitation accrued. *Corrosion Rectifying Co. v. Freeport Sulphur Co., supra,* 197 F.Supp. at 292. I find no indication that Texas regards its statute authorizing attorney's fees to be procedural. *Cf., City of Carter Lake v. Aetna Casualty & Surety Co.,* 604 F.2d 1052 (8th Cir. 1979). Consequently, the law of Iran, which governs the contract, also controls on the issue of attorney's fees.

Iranian law recognizes an award of attorney's fees to be proper under the circumstances here presented. Article 719 of the Code of Civil Procedure of Iran. In proper cases, such recovery is awarded by reference to a progressive schedule of fees, of 11% on the first 500,000 rials recovered, 8% on the second 500,000 rials and 6% on any recovery greater than 1,000,000 rials. Having reviewed the entire record in this case, I conclude that the amount permitted under this fee schedule cannot be criticized as unreasonable, but is fully justified by the nature and extent of services rendered by Plaintiff's attorneys in this case.

22. Any conclusion of law that is also a finding of fact is here deemed to be a finding of fact.

The parties are directed to prepare a form of judgment in conformity with the findings and conclusions contained in this order.

So ORDERED this 2nd day of May, 1980.

/s/ ROBERT W. PORTER
UNITED STATES DISTRICT JUDGE

1. *See* Annexes C and F of the contract.

2. This figure is comprised of the following monthly payments invoiced:

Khordad 1357	May 22-June 21, 1978	1,400,000
Tir 1357	June 22-July 22, 1978	1,400,000
Mordad 1357	July 23-August 22, 1978	1,400,000
Shahrivar 1357	August 23-September 22, 1978	1,400,000
Mehr 1357	September 23-October 22, 1978	1,400,000
Aban 1357	October 23-November 21, 1978	1,400,000
Azar 1357	November 22-December 21, 1978	1,400,000
Day 1-26, 1357	December 22-January 16, 1979	1,118,000

3. The evidence was undisputed that performance review meetings were regularly scheduled and conducted between representatives of EDSCI, the Ministry and SSO. Also without refuting evidence were testimony and exhibits showing EDSCI's submission of progress reports to officials and employees of these defendants for their review.

4. Plaintiff introduced a plethora of evidence showing the fact and result of its services: testimony from those who managed and implemented the data processing systems, photographic evidence illustrating aspects of the data preparations functions developed, as well as reports jointly prepared by EDSCI and the Ministry of benefits being realized from the contract. Credible evidence failed to directly rebut this showing.

5. EDS provided administrative, financial, accounting, technical and staffing support from its Dallas, Texas headquarters, in compliance with its contractual obligations.

6. Despite the legislatively-declared status of the SSO as a separate juridical entity, I note that its organization provided the potential for domination by the Ministry. The SSO's Board of Directors is chaired by the Deputy Minister

of Health and Social Welfare, who also serves as its Managing Director. Some Board members are appointed by the Minister of Health and Social Welfare, while others are appointed by the Council of Ministers. The SSO also has a "High Council," chaired by the Minister of Health and Social Welfare. The High Council has the duty to decide SSO policy and to approve its budget. Consequently, the domination that occurred during the events here at issue was possible because of SSO's internal structure. This potential was borne out by the evidence compelling my finding that for the purposes of this action, SSO may fairly be said to have been the alter ego of the Ministry.

7. Section 3 of the Foreign Sovereign Immunities Act of 1976 amended the provisions of 28 U.S.C. § 1332 as it related to diversity jurisdiction of United States District Courts over foreign states. See Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891, reprinted in 1976 U.S. Code Cong. & Ad. News, 6604, 6613.

8. Article 68 of the public Auditing Law of Iran provides that

> Transactions carried out by government ministries or establishments, whether in the form of buying or selling, renting or leasing, contracting or commissioning . . . must be carried out through tenders for lowest or highest bids, as the case may be, except in the following cases:
>
> . . .
>
> ii) where it concerns the purchase of property or services or rights which, as decided by the minister or head of the government establishment, is considered unique; (or)
>
> iv) when buying artistic services and services of master craftsmen or experts

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,

Plaintiff,

VS.

THE GOVERNMENT OF IRAN, THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, AND THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN,

Defendants.

CIVIL ACTION No. CA3-79-218-F

FINAL JUDGMENT

On January 14, 1980, the above cause came on for trial to the Court, all parties being represented by their attorneys of record herein, and the parties having presented evidence, authorities, and argument to the Court, and having closed the evidence on January 28, 1980, and the Court concluding that Judgment should be entered for Plaintiff herein in accordance with the Findings of Fact and Conclusions of Law filed heretofore:

IT IS ORDERED, ADJUDGED and DECREED that Plaintiff Electronic Data Systems Corporation Iran have and recover of Defendants The Government of Iran, The Social Security Organization of The Government of Iran and The Ministry of Health and Welfare of The Government of Iran, jointly and severally, the sum of fifteen million, one hundred seventy-seven thousand, four hundred and four dollars (15,177,404), plus two million, eight hundred twelve

thousand, two hundred fifty-one dollars ($2,812,251) as pre-judgment interest, plus one million, seventy-nine thousand, eight hundred seventy-five dollars ($1,079,875) as attorneys' fees, plus interest on all such sums at the rate of nine percent (9%) per annum from the date hereof, plus all costs of suit herein; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED as follows pursuant to 28 United States Code Section 2201: Defendants The Government of Iran, The Social Security Organization of The Government of Iran, and The Ministry of Health and Welfare of The Government of Iran committed material breaches of the written contract with Plaintiff Electronic Data Systems Corporation Iran which is the subject of this action at a time when said contract was valid and in force; Plaintiff Electronic Data Systems Corporation Iran satisfactorily performed its obligations under said written contract at all times prior to its termination; and said written contract was lawfully and validly terminated pursuant to its terms effective January 16, 1979; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff Electronic Data Systems Corporation Iran is allowed all writs and processes provided by law for the enforcement of this Judgment.

SIGNED this 9th day of May, 1980.

/s/ ROBERT W. PORTER
UNITED STATES DISTRICT JUDGE

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Unit A
79-2641
80-1641
81-1147

ELECTRONIC DATA SYSTEMS CORPORATION IRAN,
Plaintiff-Appellee,

VS.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, and THE GOVERNMENT OF IRAN, DONALD T. REGAN, Secretary of the Treasury of the United States of America, and the UNITED STATES OF AMERICA,
Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

SUPPLEMENTAL STATEMENT AND BRIEF OF DEFENDANTS-APPELLANTS THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, AND THE GOVERNMENT OF IRAN

JUDITH LEVIN
ERIC M. LIEBERMAN
LEONARD B. BOUDIN
RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
30 East 42nd Street
New York, New York 10017
(212) 697-8640

D.L. CASE
JOHN M. SKRHAK, JR.
JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER
4300 First National Bank Building
Dallas, Texas 75202
(214) 655-2911

Attorneys for Defendants-Appellants The Social Security Organization of The Government of Iran, The Ministry of Health and Welfare of The Government of Iran, and The Government of Iran

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United States Court of Appeals

FOR THE FIFTH CIRCUIT

79-2641, 80-1641, 81-1147

ELECTRONIC DATA SYSTEM CORPORATION IRAN,

Plaintiff-Appellee,

VS.

THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, *et al.*,

Defendants-Appellants.

SUPPLEMENTAL STATEMENT AND BRIEF OF DEFENDANTS-APPELLANTS THE SOCIAL SECURITY ORGANIZATION OF THE GOVERNMENT OF IRAN, THE MINISTRY OF HEALTH AND WELFARE OF THE GOVERNMENT OF IRAN, AND THE GOVERNMENT OF IRAN

Introduction

The Social Security Organization of the Government of Iran, the Ministry of Health and Welfare of the Government of Iran and the Government of Iran submit this Supplemental Statement and Brief pursuant to this court's letter of April 21, 1981, on the issue of whether the Executive Branch has the constitutional and statutory authority to implement the Algerian Declarations, thereby requiring this court to vacate the judgment entered by the district Court and suspend plaintiff's claim. We also discuss, as the court requested, the relevance of four recent Second Circuit decisions, to the question of whether the lower court

ever had subject matter and personal jurisdiction over plaintiff's claim. The Second Circuit opinions are submitted in an appendix hereto.

Statement

On January 19, 1981, the governments of the United States of America and the Islamic Republic of Iran formally adhered to the so-called "Algerian Declarations" [1] as a means of settling certain outstanding disputes between the two governments and their respective nationals. The Declarations require the United States "to terminate all legal proceedings in the United States courts involving claims of United States persons and institutions against Iran and its enterprises, to nullify all attachments and judgments obtained therein, [and] to prohibit all further litigation based on such claims . . ." Declaration I, Principle B. The United States further agreed to "bring about the transfer" or to "arrange for the transfer" of all Iranian assets in the United States or in the custody of persons subject to the jurisdiction of the United States, either immediately or by no later than July 19, 1981.

The Declarations further provide that, with certain exceptions, all claims of United States nationals against Iran or Iranian governmental entities are to be submitted to an international arbitration tribunal to be established by the two countries. Iran has undertaken to pay in full all awards rendered by the tribunal and to attempt pre-arbi-

[1] There were two Declarations: the "Declaration of the Government of the Democratic and Popular Republic of Algeria" (Declaration I), and the "Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran" (Declaration II).

tration settlement of claims. Iran further has agreed: (1) that its assets in the United States will be used to establish a $1 billion escrow fund as security for the satisfaction of the arbitration awards; (2) that it will maintain a minimum balance of $500 million as the initial sums are used to pay awards; (3) that the arbitration awards will be enforceable in the courts of any nation.

The United States has issued a series of executive orders and regulations to carry out its obligations under the Algerian Declarations, which, *inter alia*, nullify judgments entered after November 14, 1979 and "suspend" all litigation covered by the Algerian Declarations.[2]

It is the position of the Iranian defendants that the Algerian Declarations require the immediate vacation of the judgment herein. The Iranian defendants preserve all defenses, including, without limitation, defenses arising

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[2] As already noted, it is the position of Iran and the Iranian defendants that the Algerian Declarations require the immediate termination of such litigation, and not the "suspension" carried out by the United States. Resolution of this difference in interpretation may not be undertaken by the courts of the United States. The Algerian Declarations provide that all disputes between the two countries concerning the meaning and implementation of the Algerian Declarations must be referred to the tribunal to be established by the United States and Iran.

Accordingly, this court should not decide whether the Declarations require termination as opposed to suspension of the litigation. Rather, the court should abstain from deciding that question until the matter is resolved in the manner required by the international agreements.

There is no disagreement between the two countries, however, as to the effect of the Algerian Declarations on judgments entered after November 14, 1979. The Declarations require that such judgments be nullified and vacated, and the United States has taken appropriate action to do so. This court must give full and immediate effect to that action of the United States.

under the Foreign Sovereign Immunities Act, the Act of State Doctrine, and other authority, and assert that this lawsuit and judgment were unlawful from inception. It is the Iranian defendants position, however, that such defenses should not be reached by this court in light of the overriding authority of the Algerian Declarations.

ARGUMENT

POINT I

The Executive Branch of the United States Has the Constitutional Authority to Waive, Settle or Compromise International Claims of United States Nationals.

A. *There Exists a Systematic, Unbroken Executive Practice, Acquiesced in and Approved by Congress, by Which the Executive Branch Has Waived or Settled Claims of United States Nationals Against Foreign States and Their Nationals.*

The unbroken historical understanding and practice of all three branches of the United States government, dating back to at least 1794, supports the power of the Executive branch to enter into international agreements, in furtherance of the foreign policy interest of the United States, settling or disposing of claims of United States nationals against foreign states or their nationals. Such settlement agreements frequently have included the establishment of a binding, exclusive and nonreviewable mixed commission or arbitration panel of the same type as was agreed to in the Algerian Declarations. In its brief, (at 22-23) the United States further demonstrates that Congress has known of this historic practice of the Executive and consistently has recognized, acquiesced in and affirmatively approved the President's

assertion of constitutional authority to enter into such binding settlements without the ratification of the Senate.

In order to convey fully the extraordinary breadth, consistency and clarity of the historic understanding and practice we have filed two appendices to this brief in a separate volume. Appendix A is a partial list of the Executive Agreements settling claims in which we have specified the date of the agreement, the parties, a description of the claims settled or waived, whether the settlement provided for a mixed commission or arbitration panel to finally determine the claims, and whether the agreement contained explicit provisions that decisions of the commission or panel would be binding. Appendix B provides an account of congressional responses to both specific Executive Agreements and to the general practice of the Executive in settling claims. Given the frequency with which such agreements have been made, this account necessarily is also partial.

In Appendix A we have also included the numerous instances in which the Senate ratified claims settlement treaties. As is apparent from Appendix A, this was a more common practice in the nineteenth century than in the twentieth. As Secretary of State Cass stated in 1859, the Executive sought the "formality" of Senate ratification when it was "deemed expedient" and did not in any manner feel compelled to do so by the Constitution. *See* 5 Moore, *International Law Digest* 221-22 (1906). We have included treaties ratified by the Senate in the Appendix in light of the plaintiff's contention that even Congress could not do what has been done by the Declarations here. No less than its contention with regard to executive power, this contention is refuted by the historic practice and understanding as well as the case law.

This consistent, historic pattern and practice of executive action under a claim of constitutional right and congressional acquiescence and approval of that practice has the greatest import for the constitutional arguments made by the plaintiff. Particularly with regard to questions of the division of powers between the branches of government, an historic practice and understanding as consistent and dramatic as this is dispositive. As Justice Frankfurter wrote in an oft-cited passage in his concurrence in *Youngstown Sheet & Tube Company* v. *Sawyer*, 343 U.S. 579, 610-11 (1952):

> In short, a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the President by §1 of Art. II.

See also the concurring opinion of Jackson, J., 343 U.S. at 636-37; *United States* v. *Midwest Oil Company*, 236 U.S. 459, 472-73 (1915); *Stuart* v. *Laird*, 1 Cranch 299, 309 (1803).

Plaintiff has attempted to avoid the force of the doctrine reaffirmed by Justice Frankfurter in *Youngstown* by suggesting that most claims settlement agreements had been undertaken either by treaty or pursuant to congressional authorization. In so doing, plaintiff critically distorts the historical record. First, as we have noted, in those instances where the Executive has proceeded by treaty, particularly in the nineteenth century, it did so because it was "deemed expedient" politically, and not because it was required. Second, plaintiff ignores the overwhelming number of instances—numbering *at least* forty-

five for the nineteenth century and *at least* forty-six for the twentieth century (App. A)—in which the Executive acted by executive agreement and not by treaty. Third, it simply is not true that Congress provided the legal authority for the post-World War II executive agreements settling claims. Rather, as set forth in Appendix B (B-15 to B-21), Congress specifically and consistently has recognized that the Executive has the constitutional power to settle international claims by executive agreement, and that Congress has little or no direct power to block such agreements. Among other occasions, Congress, in enacting and amending the International Claims Settlement Act of 1949, 22 U.S.C. §§1621, *et seq.*, acknowledged the President's power and took steps to facilitate the implementation of executive action. The point was made clear most recently when Congress amended the Act in 1980 to provide for determination by the Foreign Claims Settlement Commission of outstanding claims of United States nationals against Vietnam *in the event of an executive agreement settling such claims.* Pub.L. 96-606, 94 Stat. 3534 (December 28, 1980). The House Report stated and emphasized that this "legislation neither authorizes nor encourages diplomatic recognition of the current government of Vietnam or any other action that would create a climate in which claims negotiation might take place." H.R. Rep. No. 96-915, *United States Nationals—Recovery of Losses,* 96th Cong. 2d Sess. at 2, 4 (1980).

Congress elsewhere has taken significant action to facilitate the Executive's claims settlement practice by enacting the Trading With the Enemy Act, 50 U.S.C. App. §5b, and its successor statute, the International Emergency Economic Power Act ("IEEPA"), 50 U.S.C. §1702.[3] These

[3] Section 1702 contains the identical language of Section 5(b) of the Trading with the Enemy Act, 50 U.S.C. App. §5b, which

statutes have granted the Executive the power to freeze the assets of a foreign state, including the private assets of citizens of a foreign state, for the very purpose of marshalling and using such assets in furtherance of an international agreement settling foreign claims.

Plaintiff also attempts to distinguish the historical exercise of the Executive's practice of settling claims on the ground that most of the settlements occurred during the era of the "absolute" theory of sovereign immunity when, they suggest, United States claimants presumably had no right, and thus no property interest, in their foreign claims. Here, too, the historical record belies plaintiff's argument.

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was the statutory authority for earlier foreign assets programs. The only relevant difference between the two statutes is that the IEEPA removed the President's power to *vest* the foreign assets in the United States, except during wartime. As the legislative history makes clear, "the power to vest" is the power to "take *title* to foreign property." H.R. Rep. No. 95-459, *Trading with the Enemy Act Reform Legislation*, 95th Cong., 1st Sess. at 9, 15 (emphasis added). *See also, Propper* v. *Clark*, 337 U.S. 472, 483-84 (1942). The present Executive Orders and Regulations do not constitute a vesting of assets and, therefore, are within the statutory grant of power under the IEEPA. Title to the assets is and always has been in Iran. *See Unidyne Corp.* v. *Government of Iran*, Civil Action No. 80-029-A (E.D., Va., March 30, 1981), *Slip op.* at 5-6. (Copies of the opinion have been lodged with the Clerk of the Court.)

The Supreme Court has upheld executive action freezing and transferring assets, thereby cutting off creditors' rights to those assets. Although taken pursuant to earlier assets control programs which contained vesting provisions, the President's action did not turn on the act of vesting. *See Zittman* v. *McGrath*, 341 U.S. 471 (1951); *Orvis* v. *Brownell*, 345 U.S. 183, 188 (1953).

The United States, in its brief at pp. 6-7, contends that the Executive Orders and Regulations have no effect on the prejudgment attachment entered in this case in the Southern District of New York. Iranian defendants maintain that EDSCI's prejudgment attachment must be nullified pursuant to the Declarations. This Court should not resolve this question, which must be referred to the international tribunal in accordance with the terms of the Declarations. *See* n.2, *supra*.

As Appendix A makes clear, from the earliest days of the Republic, the Executive, in furtherance of its foreign policy power, settled claims of United States nationals against, *inter alia*, citizens and nationals of foreign states who were not entitled to immunity, as well as foreign states which otherwise had waived their immunity or had recognized the right of United States nationals to compensation. *See also*, for example, *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801); *Gray* v. *United States*, 21 Ct. Cl. 340 (1886); *Meade* v. *United States*, 2 Ct. Cl. 224 (1886), *aff'd*, 9 Wall 691 (1869); *In Re Atocha*, 17 Wall 439 (1873); *Ship Apollo* v. *United States*, 35 Ct. Cl. 420 (1900); *United States* v. *Pink*, 315 U.S. 203 (1942). Thus, in the *Schooner Peggy*, the United States waived the claims of United States citizens to a foreign ship which a United States circuit court of appeals had held was properly condemned as a prize. In *Gray*, a United States merchant had a valid cause of action against a French privateer in the French courts, and, indeed, the French courts held substantial security to satisfy his claim. The claim nevertheless was waived by the United States in its entirety.

Further, even claims not assertable in courts of law were still considered things of value in that sovereigns—including, of course, the United States, which also asserted absolute immunity in this period—frequently felt bound for reasons of principle and credit standing to acknowledge and settle the claims against them as a matter of grace. *See*, for example, *Meade* v. *United States;* 5 Hackworth, *Digest of International Law*, 501-03, 506-07, 509, 520-21, 524, 611 (1943); 6 Moore, *International Law Digest*, 676-78 (1906); *The Ship Tom*, 29 Ct. Cl. 68, 88-89 (1894); *The Brig Freemason* v. *United States*, 45 Ct. Cl. 555, 562, 566 (1910).

In short, the Executive's power to settle claims, whether by executive agreement or treaty, was never limited either theoretically or in practice by the nature of the foreign claim or the practical or legal ability of the United States claimants to obtain satisfaction in the absence of the claims agreement. Thus, the advent of the "restrictive" theory of sovereign immunity, to the extent that it narrowed the legal basis upon which a foreign state could resist judicial enforcement of a claim by a United States national, had no effect whatsoever on the entirely separate question of the powers of the Executive to settle such claims under the foreign affairs powers.

B. *The Courts Have Recognized and Upheld the President's Constitutional Powers to Waive and Settle Claims of United States Nationals.*

The federal judiciary, including the Supreme Court, has expressly recognized, approved and given effect to Executive actions settling foreign claims of United States nationals, both by treaty and executive agreement. Thus, for example, in *The Schooner Peggy,* the Supreme Court upheld a claims settlement agreement with France providing that property captured as a prize by United States nationals, but not yet "definitively condemned" by the courts, must be restored to its French ownership. The Court set aside the court of appeals' judgment of condemnation, and ordered the French ship returned.[4] Similarly, in *Gray,* the Court of Claims stated:

> [I]n the negotiation of 1800 we used "individual" claims against "national" claims, and the set-off was of French national claims against American individual claims. That any Government has the right to do this,

[4] The Court of Appeals had awarded half the proceeds to the individual seamen, 5 U.S. (1 Cranch) at 106.

> . . . or to take other action, which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion.

21 Ct. Cl. at 392. *See also, Great Western Insurance Co.* v. *United States,* 112 U.S. 193 (1884).

The Supreme Court initially considered the first executive agreement of the modern era waiving and settling claims—the 1933 Agreement with the Soviet Union—in *United States* v. *Belmont,* 301 U.S. 324 (1937). The unanimous Court took specific note of the long historic practice of the Executive settling claims precisely in the manner done here, referring to a compilation of those executive agreements in Moore, *International Law Digest,* and held that such international compacts did not require the participation of the Senate. *Id.* at 330-31.

The Supreme Court returned to the 1933 Agreement in *United States* v. *Pink,* 315 U.S. 203 (1942). It reaffirmed its holding in *Belmont* that the Executive could act alone to settle claims of United States citizens. It rejected the further challenge that the Executive could not reach an agreement cutting off interests in Soviet property held in the United States, including interests secured by attachments and judgments, and requiring the individuals holding such claims to obtain relief from a general fund to be administered and distributed according to a program established by the political branches. Justice Frankfurter, concurring, explicitly stated "that the President's control of foreign relations includes the settlement of claims is undisputable." 315 U.S. at 240.

Plaintiff seeks to distinguish *Pink* on the ground that the interests in property cut off by the action of the President in that particular case belonged to foreign

nationals and corporations. The distinction is meaningless. While, as the *Pink* Court stated, in settling claims the President may favor United States nationals over foreign nationals, the President's power to settle claims and to cut off interests in property within the United States is the same in either instance. The Court in *Pink* acknowledged that under New York law the foreign nationals had a property interest in the assets in question, that the foreign nationals were entitled to the full protection of the Fifth Amendment, and that the foreign nationals had a constitutional right to access to the courts. Nevertheless, the Court held that the executive agreement cutting off the rights of the foreign nationals to the assets in question was valid and had to be given full effect. Indeed, the Litvinov assignments cut off interests in the assets in question of United States nationals as well as foreign nationals, including interests secured by prejudgment attachments and judgments. See House Rep. No. 624, 84th Cong., 1st Sess. (1955), reprinted in [1955] U.S. Code Cong. & Ad. News 2745, 2750. *See also* discussion in Appendix B, pp. B-14-15.

Belmont and *Pink* do not rest principally upon the constitutional power of the President to recognize foreign governments. In *Belmont*, the Court made specific reference to the historic practice of the Executive in settling claims with already recognized governments. In *Pink*, the Court spoke of the foreign policy power generally and of the underlying diplomatic and constitutional imperatives in permitting the Executive the authority to settle claims. In the *Pink* situation, the President's action settling claims went beyond mere "recognition" of the Soviet Union; as the Supreme Court emphasized again and again, it constituted an effort of the President to normalize relations between the two nations.

The point was recognized by the court in *Ozanic* v. *United States,* 188 F.2d 228, 231 (2d Cir. 1951), which held, in an opinion by Judge Learned Hand, that:

> The Constitutional power of the President extends to the settlement of mutual claims between a foreign government and the United States, at least when it is an incident to the recognition of that government; and it would be unreasonable to circumscribe it to such controversies. The continued mutual amity between the nation and other powers again and again depends upon a satisfactory compromise of mutual claims; the necessary power to make such compromises has existed from the earliest times and been exercised by the foreign offices of all civilized nations. (footnote omitted)

In the present circumstances, the Executive's actions were undertaken in furtherance of the normalization of relations with a foreign state, actions which are committed to the President under his foreign affairs powers. There is no doctrinal or rational distinction between the action of the Executive in *Pink* and the action of the Executive in the present situation.

The President's power to enter into claims settlement agreements in furtherance of foreign policy interests of the United States is such a fundamental and necessary aspect of the Executive power as to be a political question over which the courts should not and may not exercise judicial review. *Baker* v. *Carr,* 369 U.S. 186, 217 (1962). The various rationales for application of the political question doctrine, expressed in the disjunctive by the Supreme Court in *Baker* v. *Carr,* merge here. First, the negotiating of claims settlement agreements as part of the United States foreign policy is committed to the Executive. It is necessary that the President have the power to settle

claims if he is to be able to pursue overriding foreign policy goals for the nation as a whole. Similarly, no judicially manageable standards exist with which to adjudicate plaintiff's claim. It is impossible for the judiciary to put itself in the place of the Executive to determine whether or not an overall agreement settling claims and otherwise normalizing relations with a foreign sovereign is necessary, appropriate or in the best interests of the nation and its citizens. Nor can a court procure the relevant evidence, much of which may be in the possession of foreign governments, some of which may be privileged. *See, Mitchell* v. *Laird,* 488 F.2d 611, 616 (D.C. Cir. 1973).

In short, any effort by the courts to review an Executive claims settlement agreement necessarily would interject the court into a "policy determination of a kind clearly for non-judicial discretion," would express a "lack of respect" due to the Executive branch, and would carry the potential for embarrassment and compromise of the Executive's role in foreign affairs. *Baker* v. *Carr,* 369 U.S. at 217.

Certainly, for example, it is inconceivable that a court could pre-judge a pending claims settlement agreement and enjoin the President from acting if it found a threat of violation of property rights of United States nationals. Such an interjection of the judiciary into the Executive's power to conduct foreign relations with other nations could result, at the least, in profound embarrassment and harm to the United States' ability to deal as an equal with other nations; at the worst, it could result in the serious deterioration of the international position of the Nation, and even in war. For similar reasons, the court may not interfere with a claims settlement agreement even after the fact. A court is unable to weigh the foreign policy implications and the possibilities of prejudice and embarrassment to the

Executive Branch if it interferes with such an international compact.

C. *The Executive Actions Do Not Violate Article III of the Constitution.*

Plaintiff argues that the Executive's implementation of the Algerian Declarations improperly divests the federal courts of jurisdiction over valid cases and controversies in violation of Article III of the Constitution.

Plaintiff mischaracterizes the meaning and effect of the Executive's actions. The Executive has not attempted to interfere with the "jurisdiction" of the federal courts over cases and controversies. Rather, acting within his Article II powers, he has "settled" such cases, principally by requiring United States nationals to submit their claims against Iranian entities to an international claims tribunal, whose decision shall be final and binding. We already have noted that the United States national claimants are "bound" by the settlement. Accordingly, there no longer remain live cases or controversies, within the meaning of Article III, over which the courts may exercise jurisdiction. *See The Schooner Peggy; United States* v. *Pink.*

No Article III question is presented for another reason. Under international law, an agreement between one government and another waiving or settling the claims of nationals relieves the foreign state of any "further responsibility." *Restatement (Second) of the Foreign Relations Law of the United States,* §§205, 213.[5] The well-established practice of nations is to treat such agreements as lawful and binding. In addition to Appendix A, *see,* for example, 8 Whiteman, *Digest of Int'l Law,* § 37 at

[5] *See also,* for example, Statement of Secretary of State Freylinghuysen (1884), in 6 Moore, *International Law Digest,* at 1015-16 (1906).

1217-33; 6 Moore, *International Law Digest* 1004, 1012-1027; 7 Moore at 52, 58; Grotius, *Rights of War and Peace,* Book 3, Ch. 20, §§ 16-17. Such a customary practice of nations, wide-spread and acquiesced in by the world community, forms part of international law. *The Paquete Habana,* 175 U.S. 677, 686 (1900); *Banco Nacional de Cuba* v. *Sabbatino,* 307 F.2d 845 (2d Cir. 1962), *rev'd on other grounds,* 376 U.S. 398; Statute of the International Court of Justice, Article 38(b); 1946-47 U.N. Yearbook 843.

"International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending on it are duly presented for their determination." *The Paquete Habana,* 175 U.S. 677, 700 (1900). *See also,* for example, *Ware* v. *Hylton,* 3 U.S. (3 Dall.) 199 (1796); *Filartiga* v. *Pena-Irala,* 630 F.2d 876, 886-87 (2d Cir. 1980); *Restatement (Second),* § 3. Accordingly, the *substantive law* applicable here relieves the Iranian defendants of any "further responsibility" than that provided for in the Algerian Declarations. An Article III challenge no more lies here than whenever there has been an accord and satisfaction under the applicable substantive law.

Conceptualized slightly differently, once the Executive has exercised his Article II powers to settle such claims, they become non-justiciable political questions. *See* discussion, *ante.* The political question doctrine is not jurisdictional. Rather, it requires the judiciary to abstain from exercising its Article III jurisdiction over cases or controversies the resolution of which are committed to the political branches. *See Baker* v. *Carr,* 369 U.S. 186 (1962). In the present context, otherwise justiciable cases became non-justiciable once the Executive settled or compromised the claims in furtherance of the foreign policy interests

of the United States. Such action does not deprive the federal courts of Article III jurisdiction.

Close analogies, and definitive answers to plaintiff's Article III argument, are provided by the Act of State cases and the sovereign immunity cases decided prior to the enactment of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§1602, *et seq.*

In *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964), the Supreme Court held that the judiciary might not examine the acts of a foreign sovereign done on its own territory even though alleged to be a violation of international law because to do so would interfere with the Executive's conduct of foreign relations, particularly its efforts in the case of Cuba to negotiate a settlement at some future date of the claims of United States citizens against Cuba. The Court adhered to this view despite entreaties that depriving litigants of a judgment based upon law offends the Article III jurisdiction of the courts and the Fifth Amendment rights to property and access to the courts. *See* Mr. Justice White's dissenting opinion, Part III; Brief for North American Sugar Industries, Inc., p. 25; Brief for the Committee on International Law, the Association of the Bar of the City of New York, pp. 8-11.

In the Court's view, there was no violation of Article III because the "constitutional underpinnings" of the Act of State doctrine placed primary reliance on the Executive's power and ability to settle claims diplomatically and recognized that judicial action could only interfere with the efforts of the Executive pursuant to its constitutional authority and responsibilities.

The point was dramatically re-emphasized by Justice Rehnquist in *First National City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759 (1972):

> The act of state doctrine, as reflected in the cases culminating in *Sabbatino*, is a judicially accepted limitation on the normal adjudicative processes of the courts, springing from the thoroughly sound principle *that on occasion individual litigants may have to forego decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of the Nation's foreign policy.*

406 U.S. 759, 769 (emphasis added).

The sovereign immunity cases are to the same effect. From the early days of the Republic, the United States judiciary bowed to the suggestion of the Executive Branch that certain suits against foreign sovereigns, *otherwise within the jurisdiction of the federal courts,* should not be entertained in United States courts. The courts held that determinations of questions of sovereign immunity were committed to the Executive branch as a political question, and that when the Executive suggests to a court that a foreign state be accorded immunity, "courts may not so exercise their jurisdiction." *Ex Parte Peru,* 318 U.S. 578, 588. *Accord, Compania Espanola de Navegacion Maritima* v. *The Navemar,* 303 U.S. 68, 74 (1938); *Spacil* v. *Crowe,* 489 F.2d 614 (5th Cir. 1974); *Rich* v. *Naviera Vacuba,* 295 F.2d 24 (4th Cir. 1961).

The subsequent enactment of the Foreign Sovereign Immunities Act (hereinafter "FSIA"), of course, removed the power to make determinations of sovereign immunity from the Executive, and reposed it in the courts pursuant to clearly defined statutory criteria. The fact that the courts are now empowered to make such determinations, however, in no way alters the constitutional and jurisprudential significance of the prior practice.

Plaintiff argues that the Foreign Sovereign Immunities Act completely alters the applicable law, suggesting that no right of action against foreign sovereigns existed previous to its enactment. It is clear, however, that "[b]efore the FSIA, plaintiffs enjoyed a broad right to bring suits against foreign states, subject only to State Department intervention and the presence of attachable assets." *Texas Trading and Milling Corp.* v. *Federal Republic of Nigeria*, No. 80-7703 (2d Cir. April 16, 1981), Slip op. (Appendix C) at 2602. On its face, the FSIA deals only with the legal determination of whether, in a particular case, a foreign state is entitled to sovereign immunity.

The FSIA does not have the slightest effect upon the independent Executive power to enter into claims settlement agreements binding upon the parties and, where provided, foreclosing parties from pursuing cases otherwise within the court's jurisdiction. *See, Unidyne Corp.* v. *Government of Iran*, Memorandum Opinion at 6-7. Nothing in either the FSIA itself or its legislative history evidences the slightest suggestion that Congress intended to foreclose the President from settling claims independently of foreign sovereign immunity questions. The Executive participated in drafting and recommended passage of the FSIA, which "was introduced [in Congress] in accordance with the recommendations of an executive communication." House Rep. No. 94-1487, *Jurisdiction of United States Courts in Suits Against Foreign States*, 94th Cong., 2d Sess. at 6-7, reprinted in [1976] U.S. Code Cong. & Ad. News 6604, 6605. It defies reason to conclude that the Executive and Congress, without even mentioning it, intended to abrogate the President's constitutional power to settle claims. In fact, the Legal Advisor to the State Department emphasized in testimony before the

House Judiciary Committee that the FSIA would not impinge upon the President's historic powers to settle claims:

> Well, the claims of the U.S. nationals against foreign governments are frequently taken up and espoused by the U.S. Government as, in effect, a diplomatic claim—through diplomatic channels and sometimes they are paid. We have had numerous claims agreements with foreign countries in recent years; general claims settlements as such and also very specific cases. So that is an option [to attachments or execution] which is a realistic one.

Hearings Before the Subcommittee on Claims and Governmental Relations of the House Judiciary Committee on HR 3493: Immunities of Foreign States, 93 Cong., 1st Sess. 26 (1973).

This circuit has held that

> Absent clear and unequivocal evidence of [Congressional] intent [to limit the Executive], we are unwilling to announce a limitation on the President's powers to conduct the foreign affairs of this country. [citations omitted].

Real v. *Simon,* 510 F.2d 557, 560 (5th Cir. 1975). Here, the evidence is that Congress had no intention whatever to limit presidential power in the field of foreign affairs.

It is significant that at the time of the enactment of the FSIA, Congress did not disturb the President's powers under the Trading With the Enemy Act (TWEA), 50 U.S.C. App. §5b, to freeze assets, or to nullify, void or prohibit any interests or judgments obtained by United States nationals. In fact, at the time of the enactment of the FSIA, there existed regulations freezing the assets of certain foreign states, barring attachments or judgment

against such assets, and even barring the institution of lawsuits under certain circumstances. *See* Cuban Assets Control Regulations, 31 C.F.R. §515 *et seq.*, especially §515.504. *See*, to the same effect, 31 C.F.R. §§212, 500.504.

It is equally significant, and in fact dispositive, that one year *after* enactment of the FSIA, the Congress reenacted the TWEA in its entirety for periods of declared war and enacted the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §1702 *et seq.*, to be effective in periods of presidentially-declared emergencies. IEEPA adopted the very language of section 5(b) of TWEA, except to the extent that TWEA permitted "vesting" of foreign assets in the United States. Moreover, IEEPA explicitly ratified and grandfathered the then-existing foreign assets control regulations with respect to Cuban, Vietnamese and other foreign assets, which prohibited judicial attachments or judgments. 50 U.S.C. §1706(a).

Further, since the enactment of the FSIA, the President has entered into Executive agreements settling the claims of United States nationals against foreign governments. These agreements have met with Congressional praise. *See* Appendix B, at B-20-1. Moreover, Congress has amended the International Claims Settlement Act of 1949, 22 U.S.C. §§ 1621, *et seq.*, as amended (1980), looking forward to an eventual settlement by Executive agreement of claims against Vietnam. *See* Appendix B, at B-21.

These actions of Congress simply confirm the obvious. The FSIA has nothing whatever to do with and does not derogate from the Executive's statutory and constitutional power to settle foreign claims in furtherance of overriding foreign and economic policy objectives of the United States.

We emphasize that this court is not writing on a clean slate on the question presented by the appellant. The Su-

preme Court has clearly indicated its approval of the Executive practice of doing precisely what it has done in settling the claims of United States nationals against the Islamic Republic of Iran and other major differences between the two countries. The constitutional challenges presented by plaintiff are not new and they have never found acceptance by the Supreme Court. Further, they do not withstand the tests of analysis or history, and would be rejected even if there was no precedent to guide this court. However, we respectfully suggest that the Supreme Court has spoken on the matter and it is for that Court alone to consider whether it wishes to reexamine its prior views.

POINT II

The Question of the Adequacy of the Compensation, If Any, Due to Plaintiff Is Not a Basis for Judicial Refusal to Carry Out the Executive's Action.

A. *Plaintiff Suffers No Loss by the Executive's Action Because the Judgment Was Invalid and Unlawful Under the Foreign Sovereign Immunities Act and Entered in Violation of Treasury Regulations.*

The court is respectfully referred to Iranian defendants' briefs and *amicus* briefs of the United States previously filed in No. 80-1641.

Recent decisions of the Second Circuit Court of Appeals, submitted in the appendix hereto, support Iranian defendants' argument that the lower court never had personal or subject matter jurisdiction over EDSCI's claim. In *Texas Trading & Milling Corp.* v. *Federal Republic of Nigeria,* the Second Circuit held that jurisdiction over a foreign sovereign requires proof of both the "minimum contacts" required by the Due Process Clause and the jurisdictional facts for subject matter jurisdiction under

the Foreign Sovereign Immunities Act. Appendix C at 2592, 2604. In that case, the court upheld the exercise of personal jurisdiction as consistent with due process based on Nigeria's initiation of substantial and pervasive contacts with the United States, its choice of American law and process and the fact that it had contracted to make payment in New York dollars. *Id.* at 2601-2601. There are no such facts here. Iranian defendants' negligible contacts with the United States were at EDSCI's initiative and the contract in question specified application of Iranian law.

On the question of subject matter jurisdiction, the Second Circuit held only that a foreign sovereign's failure to pay a United States corporation in the United States amounted to a direct effect in the United States and thus came within the limited exceptions to the Foreign Sovereign Immunities Act's general grant of immunity. 28 U.S.C. §1605(a)(2). *Id.* at 2601-2602. The court explicitly declined to decide whether the failure to pay a United States corporation *overseas* would constitute a direct effect. *Id.* Here, plaintiff contracted for payment in Iran in rials, the Iranian currency. Any failure to pay it is *not* a direct effect under the FSIA.

Similarly, in *Gemini Shipping, Inc.* v. *Foreign Trade Organization for Chemicals and Foodstuffs, et al.*, the Second Circuit found subject matter jurisdiction under the exception in §1605(a)(2) for "commercial activity carried on in the United States." There, the foreign sovereign had solicited bids in the United States, arranged payment through a letter of credit confirmed by a New York bank and received financing from the United States Department of Agriculture. Appendix D at 2616-2618.[6] In sharp

[6] Plaintiff contended at oral argument that the Social Security Organization had solicited business in the United States. However, plaintiff never proved any such solicitation. *See* Defendants-Appellants Reply Brief at 2-3.

contrast, SSO's contacts with the United States were so insubstantial that they do not even justify personal jurisdiction under the Due Process Clause's "minimum contacts" test, much less warrant a finding of subject matter jurisdiction under the FSIA's "substantial contact" standard for commercial activity in the United States.[7]

B. *Even If Plaintiff Does Suffer a Loss and Has a Right to Compensation, the Question of the Existence and Adequacy of Plaintiff's Remedy Is a Political Question.*

Iranian defendants take no position on the question whether plaintiff is entitled to compensation from the United States if plaintiff should suffer a loss as a result of the implementation of the Algerian Declarations. Iran does take serious issue, however, with plaintiff's argument that the executive agreement may not be enforced until and unless plaintiff is assured a complete remedy for such a loss, if one should develop. As we emphasized in Point I, the judiciary is bound to give effect to executive action settling foreign claims. Moreover, the question of the existence and adequacy of a remedy itself is a political question, wholly apart from the court's obligation to give full effect to the executive orders.

In *Gray* v. *The United States,* 21 Ct.Cl. 340 (1886), the court addressed the issue of whether a claims settlement agreement between the United States and France gave rise to an obligation on the part of the United States government to compensate United States citizens for the loss of their claims. The court went to great pains to

[7] *Verlinden, B.V.* v. *Central Bank of Nigeria* and *Reale International, Inc.* v. *Federal Republic of Nigeria,* decided the same day and submitted in the Appendix, are not relevant to the instant case. In *Verlinden,* the Second Circuit affirmed the result on other grounds, leaving undisturbed the reasoning of Judge Weinfeld on which Iranian defendants relied in their earlier briefs.

underscore that the issue presented was a political question and that it was only because Congress had by statute directly authorized the court to render an advisory opinion that the court had any authority whatever. 21 Ct.Cl. at 344-345. Here, as in *Gray*, any of plaintiff's rights which may have been violated can only be remedied by the political branches of government.

C. *If Plaintiff Does Suffer a Compensable Loss, It May Seek Relief in the Court of Claims.*

Assuming *arguendo* that plaintiff may suffer a compensable loss as a result of the termination of its judgment, it will have a remedy for damages against the United States in the Court of Claims under the Fifth Amendment's Just Compensation Clause.[8] The Tucker Act, 28 U.S.C. §1491, "guarantees an adequate remedy at law for any taking." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 149 (1974). See also, *Dugan* v. *Rank*, 372 U.S. 609, 623-626 (1963); *Hurley* v. *Kincaid*, 285 U.S. 95 (1933); *Stringer* v. *United States*, 471 F.2d 381 (5th Cir.), *cert. denied*, 412 U.S. 943 (1973).

Armstrong v. *United States*, 364 U.S. 40 (1960), *Gray* v. *United States*, 21 Ct. Cl. 340 (1886) and *Seery* v. *United States*, 127 F. Supp. 601 (Ct. Cl. 1955), relied upon by plaintiff, all involve after-the-fact claims for just compensation. Not one of those cases questions the *authority* of the United States to take the action it did; none even remotely suggests that the relief plaintiff here seeks is appropriate.

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[8] The Court of Claims is an Article III Court. 28 U.S.C. §171; *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962).

CONSTITUTIONS, STATUTES, AND RULES

CONCLUSION

The plaintiff's constitutional challenge must be rejected. The court is required to give full effect to the Executive's actions implementing the Algerian Declarations.

Respectfully submitted,

On the Brief:

MICHAEL KRINSKY
JULES LOBEL
GORDON J. JOHNSON
ELLEN J. WINNER
EDWARD COPELAND
SIMON TAYLOR
MARGARITA ROSA

JUDITH LEVIN
ERIC M. LIEBERMAN
LEONARD B. BOUDIN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
30 East 42nd Street
Suite 1610
New York, New York 10017
(212) OX 7-8640

D. L. CASE
JOHN M. SKRHAK, JR.
JACKSON, WALFER, WINSTEAD,
CANTWELL & MILLER
4300 First National Bank Building
Dallas, Texas 75202
(214) 655-2911

Attorneys for
Iranian Defendants-Appellants

Dated: New York, New York
May 5, 1981

CONSTITUTION OF THE UNITED STATES

* * *

ARTICLE I

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

* * *

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * *

To constitute Tribunals inferior to the supreme Court;

* * *

ARTICLE II

* * *

Section. 2. The President...

...shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors....

* * *

ARTICLE III

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * *

ARTICLE VI

* * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * *

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976

28 U.S.C. §§ 1330, 1602 *et seq.*

§ 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activites are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states

to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§ 1603. Definitions

For purposes of this chapter —

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity —

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity

carried on by such state and having substantial contact with the United States.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case —

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such prop-

erty is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to —

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That —

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested

pursuant to process obtained on behalf of the party bringing the suit — unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b) (1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b) (1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b) (1) of this section.

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injur-

ies resulting from such death which were incurred by the persons for whose benefit the action was brought.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim —

(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each

into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services — and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state —

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made —

(1) in the case of service under subsection (a) (4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim

or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if —

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property —

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consist of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act if —

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court

has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if —

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

50 U.S.C. §§ 1701 *et seq.*

§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

§ 1702. Presidential authorities

(a) (1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise —

(A) investigate, regulate, or prohibit —

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent

that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall

be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly —

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

§ 1703. Consultation and reports — Consultation with Congress

(a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised.

Report to Congress upon exercise of Presidential authorities

(b) Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

Periodic follow-up reports

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) of this section with respect to an exercise of authorities under this chapter, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b) of this section.

Supplemental requirements

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

§ 1704. Authority to issue regulations

The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.

§ 1705. Penalties

(a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

§ 1706. Savings provisions — Termination of national emergencies pursuant to National Emergencies Act

(a) (1) Except as provided in subsection (b) of this section, notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this chapter, any authorities granted by this chapter, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

Congressional termination of national emergencies by concurrent resolution

(b) The authorities described in subsection (a)(1) of this section may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

Supplemental savings provisions; supersedure of inconsistent provisions

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

Periodic reports to Congress

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

§ 301. General authorization to delegate functions; publication of delegations

The President of the United States is authorized to designate and empower the head of any department or agency in the executive branch, or any official thereof who is required to be appointed by and with the advice and consent of the Senate, to perform without approval, ratification, or other action by the President (1) any function which is vested in the President by law, or (2) any function which such officer is required or authorized by law to perform only with or subject to the approval, ratification, or other action of the President: *Provided*, That nothing contained herein shall relieve the President of his responsibility in office for the acts of any such head or other official designated by him to perform such functions. Such designation and authorization shall be in writing, shall be published in the Federal Register, shall be subject to such terms, conditions, and limitations as the President may deem advisable, and shall be revocable at any time by the President in whole or in part.

§ 1732. Release of citizens imprisoned by foreign governments

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

28 U.S.C. § 1252

§ 1252. Direct appeals from decisions invalidating Acts of Congress

Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court.

. . . . . .

28 U.S.C. § 1254

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

* * *

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. §§ 2201-2202

CHAPTER 151. — DECLARATORY JUDGMENTS

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

§ 1631. Declaration of national emergency by Executive order; authority; publication in Federal Register, transmittal to Congress

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

Art. 3827a. Collection of judgments by court proceedings

(a) A judgment creditor whose judgment debtor is the owner of property, including present or future rights to property, which cannot readily be attached or levied on by ordinary legal process and is not exempt from attachment, execution, and every type of seizure for the satisfaction of liabilities, is entitled to aid from a court of appropriate jurisdiction by injunction or otherwise in reaching the property to satisfy the judgment.

(b) The court may order the property of the judgment debtor referred to in Subsection (a) of this section, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor to be turned over to any designated sheriff or constable for execution or otherwise applied toward the satisfaction of the judgment. The court may enforce the order by proceedings for contempt or otherwise in case of refusal or disobedience.

(c) The court may appoint a receiver of the property of the judgment debtor referred to in Subsection (a) of this section, with the power and authority to take possession of and sell the nonexempt property and to pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

(d) These proceedings may be brought by the judgment creditor in the same suit in which the judgment is rendered or in a new and independent suit.

(e) In a proceeding under this section, a judgment creditor is entitled to recover reasonable costs, including attorney's fees.

Rule 69. Execution.

(a) IN GENERAL. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

(b) AGAINST CERTAIN PUBLIC OFFICERS. When a judgment has been entered against a collector or other officer of revenue under the circumstances stated in Title 28; USC, § 2006, or against an officer of Congress in an action mentioned in the Act of March 3, 1875, c 130, § 8. (18 Stat 401), USC, Title 2, § 118, and when the court has given the certificate of probable cause for his act as provided in those statutes, execution shall not issue against the officer or his property but the final judgment shall be satisfied as provided in such statutes.

EXECUTIVE ORDERS, REGULATIONS, AND EXECUTIVE AGREEMENTS

Executive Order 12279 of January 19, 1981
Direction To Transfer Iranian Government Assets Held by Domestic Banks

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 7, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

1-101. Any branch or office of a banking institution subject to the jurisdiction of the United States, which branch or office is located within the United States and is, on the effective date, either (a) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (b) carrying on its books deposits standing to the credit of or

beneficially owned by such Government, agencies, instrumentalities, or controlled entities is licensed, authorized, directed and compelled to transfer such funds, securities, and deposits, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

1-102. (a) All licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in Section 535.504 of the Iranian Assets Control Regulations, with respect to the properties described in Section 1-101 of this Order are revoked and withdrawn.

(b) All rights, powers, and privileges relating to the properties described in section 1-101 of this Order and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m. EST, including those derived from Section 535.504 of the Iranian Assets Control Regulations, other than rights, powers, and privileges of the Government of Iran and its agencies, instrumentalities, and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power, or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power, or privilege whether by court order or otherwise, with respect to the properties (and any income earned thereon) referred to in Section 1-101 of this Order.

1-103. Compliance with this Order, any other Executive Order licensing, authorizing, directing or compelling the

transfer of the assets described in section 1-101 of this Order, or any regulations, instructions, or directions issued thereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions, or directions.

1-104. The Attorney General shall seek to intervene in any litigation within the United States which arises out of this Order and shall, among other things, defend the legality of, and all actions taken pursuant to, each of its provisions.

1-105. The Secretary of the Treasury is delegated and authorized to exercise all functions vested in the President by the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to carry out the purposes of this Order.

/s/ JIMMY CARTER

THE WHITE HOUSE.
January 19, 1981.

Executive Order 12294 of February 24, 1981
Suspension of Litigation Against Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170, issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of

this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Section 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

Section 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national

in any judicial proceeding pending or hereafter commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Section 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. § 1732 to carry out the purposes of this Order.

Section 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

/s/ RONALD REAGAN

THE WHITE HOUSE,
February 24, 1981.

§535.213 Direction involving property held by offices of banks in the United States in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either (1) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or (2) carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

* * *

§ 535.218 Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and standby letters of credit.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order, attach-

ment, or otherwise, including the license contained in § 535.504, with respect to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) Paragraph (a) of this section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981, and which do not relate to litigation. Such licenses shall be deemed to be revoked as of May 31, 1981, unless extended by general or specific license issued subsequent to February 26, 1981.

(f) The provisions of paragraphs (a), (b) and (c) of this section shall apply to contested and contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts.

(g) All existing attachments on standby letters of credit, performance bonds and similar obligations and on substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance bonds and similar obligations are nullified and all future attachments on them are hereafter prohibited. All rights, powers and privileges relating to such attachments are nullified and all persons hereafter are barred from asserting or exercising any rights, powers or privileges derived therefrom.

§ 535.219 Discharge of obligation by compliance with this part.

Compliance with §§ 535.210, 535.211, 535.212, 535.213, 535.214 and 535.215, or any other orders, regulations, instructions or directions issued pursuant to this part licensing, authorizing, directing or compelling the transfer of the assets described in those sections, shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, such orders, regulations, instructions or directions.

* * *

§ 535.221 Compliance with directive provisions.

(a) Compliance with the directive provisions of §§ 535.213 and 535.214 requires that persons affected by these sections

shall implement the directives as soon as reasonably practicable.

(b) Until the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling, the United States Government will not seek to impose civil or criminal sanctions on any party who does not make the transfers required by §§ 535.213, 535.214 and 535.215 and Executive Orders 12279-81 of January 19, 1981.

(c) Transfers of deposits or funds required by §§ 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following account: Federal Reserve Bank of New York as fiscal agent of the United States, Special Deposit Account.

(d) Securities to be transferred as required by §§ 535.213 and 535.214 of this part must be delivered to the Federal Reserve Bank of New York in fully transferable form, accompanied by all necessary transfer documentation, *e.g.*, stock or bond powers, powers of attorney, and also accompanied by instructions to deposit such securities to the following account: Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York for credit to the account named in paragraph (d) of this section.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department.

(e) If a security in which Iran or an Iranian entity has an interest is evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have it placed in registered form in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d) (2) of this section.

(f) Securities in which Iran or an Iranian entity has an interest that are held in the name of a nominee must be re-registered in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d) (2) of this section.

(g) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (d) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book entry form.

§ 535.222 Suspension of claims eligible for Claims Tribunal.

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and

any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

(h) The effective date of this section is February 24, 1981.

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis within the framework of the four points stated in the resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

GENERAL PRINCIPLES

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations

of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration. Through the procedures provided in the Declaration, relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

Point I: Non-Intervention in Iranian Affairs

1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

Points II and III: Return of Iranian Assets and Settlement of U.S. Claims.

2. Iran and the United States (hereinafter "the parties") will immediately select a mutually agreeable central bank (hereinafter "the Central Bank") to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter "The Algerian Central Bank") as depositary of the escrow and security funds hereinafter prescribed and will promptly enter into depositary arrangements with the Central Bank in accordance with the terms of this declaration. All funds placed in escrow with the Central Bank pursuant to this declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set

forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter "the Claims Settlement Agreement") are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depositary arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank pursuant to this declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall have the right on seventy-two hours notice to terminate its commitments under this declaration.

If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this declaration shall be of no further force and effect.

ASSETS IN THE FEDERAL RESERVE BANK

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

ASSETS IN FOREIGN BRANCHES OF U.S. BANKS

5. Commencing upon the completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

ASSETS IN U.S. BRANCHES OF U.S. BANKS

6. Commencing with the adherence by Iran and the United States to this declaration and the claims settlement agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing security account specified in that agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to

the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing security account in the Central Bank, until the balance in the security account has reached the level of $1 billion. After the $1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the security account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the claims settlement agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the security account has fallen below $500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of $500 million in the account. The account shall be so maintained until the President of the Arbitral Tribunal established pursuant to the claims settlement agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the claims settlement agreement, at which point any amount remaining in the security account shall be transferred to Iran.

OTHER ASSETS IN THE U.S. AND ABROAD

8. Commencing with the adherence of Iran and the United States to this declaration and the attached claims settlement agreement and the conclusion of arrangements

for the establishment of the security account, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in Paragraph 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this declaration and the attached claims settlement agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

NULLIFICATION OF SANCTIONS AND CLAIMS

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this declaration related to (A) the seizure of the

52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the

property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of

this declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the claims settlement agreement. Any decision of the tribunal with respect to such dispute, including any award of damages to compensate for a loss resulting from a breach of this declaration or the claims settlement agreement, may be enforced by the prevailing party in the courts of any nation in accordance with its laws.

Initialed on January 19, 1981

by _____

Warren M. Christopher
Deputy Secretary of State
of the Government of the United States

By virtue of the powers vested in him by his Government as deposited with the Government of Algeria

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA CONCERNING THE SETTLEMENT OF CLAIMS BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

ARTICLE I

Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this agreement shall be submitted to binding third-party arbitration in accordance with the terms of this agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

ARTICLE II

1. An International Arbitral Tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and

counterclaims are outstanding on the date of this agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 13-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that declaration.

ARTICLE III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the

remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the parties or by the Tribunal to ensure that this agreement can be carried out. The UNCITRAL rules for appointing members of three-member Tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this agreement shall be presented to the Tribunal either by claimants themselves, or, in the case of claims of less than $250,000, by the Government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

ARTICLE IV

1. All decisions and awards of the Tribunal shall be final and binding.

2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this agreement have been satisfied.

3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

ARTICLE V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

ARTICLE VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.

2. Each government shall designate an agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communications directed to it or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal.

3. The expenses of the Tribunal shall be borne equally by the two governments.

4. Any question concerning the interpretation or application of this agreement shall be decided by the Tribunal upon the request of either Iran or the United States.

ARTICLE VII

For the purposes of this agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this agreement. Claims referred to the Arbitral Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.

3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

4. The "United States" means the Government of the United States, any political subdivision of the United States, any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

ARTICLE VIII

This agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the agreement.

Initialed on January 19, 1981

by _____

Warren M. Christopher
Deputy Secretary of State
of the Government of the United States
By virtue of the powers vested in him by his Government as deposited with the Government of Algeria